1326.

SUPREME COURT OF THE UNITED STATES.

No. 121.

THE GRAND GULF RAILROAD AND BANKING COMPANY, AND ALFRED INGRAHAM AND GEORGE READ, ASSIGNEES OF SAID COMPANY, INTERVENORS, PLAINTIFFS IN ERROR,

vs.

JOHN R. MARSHALL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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Transcript of appeal.

J. R. MARSHALL
vs.
GRAND GULF RAILROAD AND BANKING CO.

Appeal from the ninth district court of the parish of Tensas.

Petition.

To the honorable the judge of the ninth judicial district court, holding sessions in and for the parish of Tensas, State of Louisiana. The petition of John R. Marshall, residing in the State of New York, respectfully shews, that the President, Directors and Company of the Grand Gulf Railroad and Banking Company, a banking institution incorporated by the legislature of the State of Mississippi, and located at the town of Grand Gulf, in said State, in the name and style of the President, Directors and Company of the Grand Gulf Railroad and Banking Company, is justly and legally indebted to petitioner in the sum of five thousand four hundred dollars, for this, to wit, that on the 23d day of September, in the year of 1835, the said Banking Company made, executed, and issued, as currency, their thirty-nine bank bills or bank notes, each for the sum of one hundred dollars, all of the same tenor and date, made payable to D. Hunt, or bearer, on demand, marked letter "A," and designated by their respective numbers, as follows, to wit: The 1st note, No. 1304; 2d, No. 992; 3d, No. 1258; 4th, No. 287; 5th, No. 123; 6th, No. 1268; 7th, No. 1156; 8th, No. 439; 9th, No. 1214; 10th, No. 94; 11th, No. 512; 12th, No. 772; 13th, No. 1007; 14th, No. 195; 15th, No. 524; 16th, No. 128; 17th, No. 758; 18th, No. 84; 19th, No. 1190; 20th, No. 273; 21st, No. 1360; 22d, No. 181; 23d, No. 700; 24th, No. 479; 25th, No. 301; 26th, No. 874; 27th, No. 687; 28th, No. 722; 29th, No. 384; 30th, No. 921; 31st, No. 967; 32d, No. 597; 33d, No. 714; 34th, No. 28; 35th, No. 1082; 36th, No. 500; 37th, No. 777; 38th, No. 649; 39th, No. 1429. And on the 1st day of March, in the year 1838, the said Banking Company made, executed, and issued, as currency, their other fifteen (15) bank bills or notes, each for the sum of one hundred dollars, all of the same tenor and date, marked letter "A," made payable to A. Watt, or bearer, on demand, and described as follows, to wit: The 1st note, No. 2875; 2d, No. 2877; 3d, No. 2881; 4th, No. 2891; 5th, No. 2878; 6th, No. 2871; 7th, No. 2897; 8th, No. 2898; 9th, No. 2896; 10th, No. 2824; 11th, No. 2900; 12th, No. 2883; 13th, No. 2882; 14th, No. 2876; 15th, No. 2880; making the sum of five thousand four hundred dollars. All of the above bills or notes were duly presented at said bank, and payment demanded on the 8th day of May, A. D. 1838, which was refused by said Banking Company, as per endorsements on the back of said bills or notes. All of the above described bills or notes were issued

into circulation as currency by the said banking institution as aforesaid, at and from their banking house, located at the said town of Grand Gulf, Miss'i; all of which will more fully appear by reference to said [bills] or notes, herewith annexed for reference.

Petitioner alleges, that since the execution or issuance of the above described bills or notes, by said bank as aforesaid, that the said bank has entirely failed and refused, and still refuses, to pay or redeem her bills or notes on demand. Petitioner specially alleges, that at the date of the 8th May, A. D. 1838, and at all times since, said bank has notoriously failed and refused to redeem her notes on demand; and, according to the laws of the State of Mississippi, and usages and customs of said bank, your petitioner is entitled to interest, at the rate of eight per cent. per annum, upon the amount sued on from the refusal of said bank.

Your petitioner shows that he is the legal owner and bearer of all of the above described bills or notes, issued by the defendant, at their banking-house, located at the town of Grand Gulf, in said State of Mississippi, signed by president, and countersigned by the principal cashier of said bank—promising therein and thereby to pay to the person, on each bill or note mentioned, or bearer, on demand, the amount therein mentioned, in money, and were transferable by delivery; further shows, that the said Grand Gulf Railroad and Banking Company is a corporation, established by a law of the State of Mississippi, and liable to be sued, and that said corporation resides permanently out of the State of Louisiana, but owns a large amount of property, goods and chattels, rights and credits, in this parish and State.

Your petitioner *are* informed that James G. Gordon, Thomas M. Newell, and Edward D. Newell, residing in said parish, are largely indebted to said Banking Company, and have considerable property and effects in their hands and under their control, belonging to the defendants, and prays that they be cited as garnishees, and made parties to this suit, and they be ordered to answer under oath, and state, specifically, the amount of their indebtedness to said Banking Company, and what amount of property, rights and credits, money and effects, had they in their hands or under their control, at the service hereof. Petitioner prays judgment against the said garnishees, in solido, to the amount of their indebtedness to said Banking Company, or to a sufficient amount to satisfy petitioner's demands, with interest and costs.

Wherefore, the premises considered, petitioner prays that the defendants be cited, according to law, and answer to this petition, and that an attorney, ad hoc, be appointed to represent the absentees; and that, after all due legal proceedings had in the premises, prays that general writs of attachment issue in the premises against all of the lands and tenements, rights and credits, moneys and effects, belonging to the said Banking Company, to an amount sufficient to satisfy petitioner's demand, and prays that judgment be rendered in his favor, and that the said Grand Gulf Railroad and Banking Company be ordered, adjudged, and decreed to pay to your petitioner the full amount of his claim, with interest, at the rate of eight per cent. per annum, from the

May, A. D. 1838, till paid, and costs of suit, and that the property, rights, and credits attached be sold to satisfy said debts, interest, costs, &c., and for general relief in the premises; as in duty bound.

AMONETT, DUNLAP & FARRAR,
Attorneys for petitioner.

Affidavit.

STATE OF LOUISIANA,
Parish of Concordia.

James G. Amonett, agent and attorney in fact for the petitioner, John R. Marshall, being first duly sworn, deposeth and says, that the President, Directors and Company of the Grand Gulf Railroad and Banking [Company] reside permanently out of the State of Louisiana, and that said Banking Company is justly indebted to the petitioner, J. R. Marshall, in the sum of five thousand four hundred dollars, with interest, as set forth in the within petition; and that all of the allegations are true and correct, to the best of affiant's knowledge.

JAS. J. AMONETT.

Sworn to and subscribed before me, this the 25th of May, A. D. 1843.

THOS. EDWARDS,
Justice of the Peace.

Filed May 25th, 1843.

BENJ. F. DUNLAP, *Clerk.*

Citation.

J. R. MARSHALL
vs.
GRAND GULF RAILROAD AND BANKING COMPANY.

THE STATE OF LOUISIANA,
9th district court, parish of Tensas.

To the President, Directors and Company of the Grand Gulf Railroad and Banking Company, located at Grand Gulf, Miss., and James G. Gordon, Thomas M. Newell, and Edward D. Newell, garnishees, residing in said parish of Tensas: You are hereby summoned, cited either to comply with the demand contained in the petition of the said J. R. Marshall, of which a copy accompanies this citation, or to deliver your answer to said petition, in the office of the clerk of said court, held in the town of St. Joseph, in said parish, within 12 days after service thereof.

Witness the honorable Thomas Curry, judge of said court. Signed, sealed, and delivered, this 25th day of May, A. D. 1843.

[L. S.]

BENJ. F. DUNLAP,
Clerk of said court.

Sheriff's return.

Received, Monday, June 19th, 1843, and on Tuesday, the 27th day

of June, 1843, I served the within citation and documents accompanying, on the within named defendants, by leaving a copy in the hands of Mr. Wm. F. Moore, at the residence of James G. Gordon, for J. G. Gordon; Mr. Moore being apparently above the age of 14, and residing on the premises; and on Thos. M. and E. D. Newell, by handing to them, in person, at the residence of E. D. Newell, all in the parish of Tensas, and on the Grand Gulf Railroad and Banking Company, by posting a copy of citation and petition at the door of the court-house, in the town of St. Joseph, in the parish of Tensas, on Monday, June 26th, 1843.

SAM'L H. WALKER, *Sh'ff.*
By GEO. E. EVANS, *D'y Sh'ff.*

Filed July 1st, 1843.

BENJ. F. DUNLAP, *Clerk.*

Attachment.

STATE OF LOUISIANA,
Parish of Tensas.

To Samuel R. Walker, sheriff of said parish of Tensas, greeting:

Whereas due proof has been made, upon the oath of James J. Amonett, the agent and attorney in fact of J. R. Marshall, that the Grand Gulf Railroad and Banking Company is justly indebted unto him, the said J. R. Marshall, in the sum of five thousand four hundred dollars, with interest, &c., and that said Grand Gulf Railroad and Banking Company resides permanently out of the State. Now, therefore, you are hereby commanded to attach all of the lands and tenements, rights and credits, moneys and effects belonging to said Banking Company, to an amount sufficient to satisfy the claim of the said J. R Marshall, and keep the same in your hands until further proceedings are had in the premises.

Witness the honorable the judge of the 9th district court, in and for the said parish and State, this 30th May, 1843, and the seal of said court.
[L. S.]

BENJ. F. DUNLAP, *Clerk.*

Sheriff's return.

Received the within writ of attachment, J. R. Marshall vs. Grand Gulf Railroad and Banking Company, Tuesday, May 30th, A. D. 1843; served Monday, June 26th, A. D. 1843, by posting a copy of the said writ of attachment at the door of the court-house, in the town of St. Joseph. I then proceeded, in presence of two witnesses, to attach the following described property, to wit, the value of an execution now in my hands, in favor of said bank against James G. Gordon, Thomas M. and E. D. Newell, for a debt to the amount of three thousand and seventy dollars, with eight per cent. interest, from the 31st of January, A. D. 1840; also, all the rights and credits of said institution, arising from a conventional mortgage in favor of said bank, for the sum of ten thousand five hundred and thirty-eight $\frac{41}{100}$ dollars, as recorded

April 30th, A. D. 1841, as appears by the certificate of the recorder of mortgages of the parish of Concordia, dated the 29th day of March, A. D. 1843, or so much of the said rights and credits as, together with the amount of the above mentioned execution, will satisfy plaintiff's claim and all costs.

S. R. WALKER, *Sh'ff.*

Attest: JNO. T. CLARKS,
GEORGE E. EVANS.

Filed June 1st, 1843.

BENJ. F. DUNLAP, *Clerk.*

Answer of T. M. and E. D. Newell, garnishees.

J. R. MARSHALL
vs.
G. G. R. R. & BANKING CO.

Tensas district court, June term, 1844.

Thos. M. and E. D. Newell, cited as garnishees in this case, appear and answer as follows:

1st. That we are indebted to the G. G. R. R. and Banking Co., to be paid in the funds of said bank, thirteen thousand six hundred and eight $\frac{41}{100}$ dollars, due as follows: $3,070, due 31st January, 1840; $3,286 $\frac{34}{100}$, 1st January, 1843; $3,512, 1st January, 1844; $3,739, 1st January, 1845; we also gave our note to the said bank for the sum of eight thousand dollars, which was a cotton note, and we gave said institution cotton enough to pay said note, as we supposed, and are not able to say whether we owe any thing on that score or not, as she has never given us a showing of the account of sale of said cotton; and having fully answered, respondents aver that they are entitled, by the laws of Mississippi, where said obligations were contracted, to discharge the same, by payment in the bonds or other obligations of the said G. G. R. R. and Banking Co.; wherefore, respondents pray judgment in their favor accordingly.

THOS. M. NEWELL,
E. D. NEWELL.

Sworn to and subscribed, before me, this 17th June, 1844.

B. F. DUNLAP, *J. P.*

Thos. M. Newell, one of the garnishees in the above entitled suit, deposeth and says, that he is joint drawer or endorser on a cotton note of John Gosham; that he does not know whether the said note has been discharged or not. The said Gosham shipped cotton through said bank to pay said note.

THOS. M. NEWELL.

Sworn to and subscribed, before me, this 17th June, 1844.

B. F. DUNLAP, *J. P.*

Answer of Jas. G. Gordon, (garnishee.)

JOHN R. MARSHALL
vs.
GRAND GULF RAILROAD
and Banking Comp'y.

James G. Gordon, cited herein as garnishee, appears and answers to plaintiff's petition and interrogatories, and says, that he is the security as joint drawer with and for Thos. M. and E. D. Newell, on a certain note for three thousand and twenty dollars, due and made payable to the President, Directors and Company of the Grand Gulf Railroad Bank aforesaid, which said note was due and payable previous to the service of the garnishment, and that by the laws of the State of Mississippi the respondent has the privilege and right of paying said note in the notes of the Grand Gulf Railroad and Banking Company, and that he is not bound to pay the creditors, as assignees of said bank, in any other kind of money than their own notes, bonds, or obligations; and this respondent further states, that he was notified by John Lindsey and Alfred Ingraham, that all debts due the said bank was assigned to them as assignees in trust for the benefit of the creditors of the Grand Gulf Bank, which notice I received on the 9th day of March, 1842. Since that time I have made all payments due said bank to the assignees. I attach to this answer a copy of the notice I received, and make the same a part of my answer. Therefore, respondent prays, that such judgment may be rendered as law and equity may require in the premises.

JAS. G. GORDON.

Sworn to and subscribed, before me, this 19th day of Dec., 1843.

J. W. MONTGOMERY,
Parish Judge.

(Copy.) *Notice.*

GRAND GULF, *9th Mar.*, 1842.

JAS. G. GORDON, esq.

SIR: You are hereby notified, that the President and Directors of the Grand Gulf Railroad and Banking Co. have assigned to John Lindsey and Alfred Ingraham, in trust for the benefit of their creditors, all their interest in the debts due by you to said company, either as principal, joint drawer, or endorser, and all judgments obtained on the same; and that said assignees, or their attorneys, alone are authorized to receive and receipt for the same.

(S'd) JOHN LINDSEY,
ALFRED INGRAHAM,
Assignees.

I acknowledge that a copy of the above notice was served on me, this 9th day of March, 1842.

JAS. G. GORDON.

Answer of defendants.

J. R. MARSHALL
vs.
GRAND GULF R. R. AND Banking Co.

Ninth judicial district, parish of Tensas.

Defendants, for answer to the petition of plaintiffs, deny, generally, all the allegations therein contained, and for further answer they say, that by formal deeds of assignment they did, long prior to the institution of this suit, transfer and deliver to Alfred Ingraham and George Read, herein intervening, their property, including the debts attached for the use, benefit, and protection of all creditors of the bank in general, that all rights be equally and equitably paid therefrom.

Wherefore they pray that plaintiff's demand be rejected, with costs, and for all general relief.

H. H. STRAWBRIDGE,
Counsel for def't.

Petition of intervention.

J. R. MARSHALL
vs.
GRAND GULF RAILROAD and Banking Company.

In 9th district court, parish of Tensas, State of Louisiana.

The petition of Alfred Ingraham and George Read, both residents of the State of Mississippi, respectfully shows, that in the above styled suit, numbered 11 on the docket of the district court of this parish, the plaintiff issued a writ of attachment, and caused to be attached and seized, as the property of the President and Directors of the Grand Gulf Railroad and Banking Company, the following described property, to wit: the value of an execution then in the hands of the sheriff of said parish, in favor of the said bank, against James G. Gordon, Thomas M. and E. D. Newell, for a debt to the amount of three thousand and seventy dollars, with 8 per cent. interest, from the 31st of January, A. D. 1840. Also all the right and credit of said institution, arising from a conventional mortgage in favor of said bank, for the sum of ten thousand five hundred and thirty-eight $\frac{11}{100}$ dollars, as recorded in parish of Concordia, and as more fully shown and set forth in the return of the sheriff on said writ of attachment. That the said plaintiff is about to obtain (unless otherwise ordered by the court) judgment against the said bank for the amount claimed in their petition in this case, and will proceed to sell and dispose of the said property to pay the said debt and judgment, as the property of the said bank. Your petitioners further shew, that on the 10th day of February, A. D. 1842, before the issuance of said attachment or the institution of this suit, the said Banking Company, by the name and style of the President and Directors of the Grand Gulf Railroad and Banking Company, assigned and transferred

all their rights, and interest, and credits, in the said property, in trust for certain purposes in said assignment set forth, to said Alfred Ingraham and John Lindsey, which said assignment divested the said Banking Company of all interest in the said property. That the said assignment and transfer was notified and made known to the garnishees in their case, long previous to this attachment, and was duly and legally executed by the said bank. That the said John Lindsey having died, by due authority and regular assignment of all parties interested, the petitioner, George Read, was substituted trustee and assignee in the place of the said John Lindsey, and jointly with Alfred Ingraham. Then the said property was duly and legally assigned to the said bank, and by the consent of the creditors of said bank, and in accordance with the power of said parties, and in accordance with the power in the charter of said bank, and with the laws of the State of Mississippi, where the said bank is situated, and where the said assignment was made, that said assignment transferred all of the property attached, to your petitioners long previous to the said attachment. That the said writ of attachment issued, and was executed and levied, without any order or judgment for the same. That your petitioners are the true and legal owners and holders of the property attached in this case, and that they are agents and trustees for other creditors of the bank, for whose benefit and interest the said assignment was made; and that if the said plaintiff is allowed to be paid first, and in preference to all the other creditors, the same will be a great and manifest injustice. Therefore, your petitioners pray to be permitted to intervene in this suit, and that the plaintiff and defendant be cited to answer this petition of intervention, and that the property attached be decreed to belong to your petitioners; that the same be released from attachment, and the said attachment be dissolved as to all the property belonging to or transferred to your petitioners, as set forth; and that your petitioners recover five hundred dollars damages from the plaintiffs for their wrongful seizure and attachment in the premises, and for general relief in the premises.

SHAW & LAWRENCE,
Attorneys for intervenors.

Answer to intervention.

J. R. MARSHALL
vs.
GRAND GULF RAILROAD and Banking Co.

9th district court, parish of Tensas.

The plaintiff, John R. Marshall, comes into court, by his counsel, and for answer to the petition of intervention herein filed by Alfred Ingraham and George Read, denies each and every allegation therein contained. Denies that the said Ingraham and Read are the assignees of the defendant, as alleged; and avers that the alleged assignment, as set forth in their said intervention, is null and void by the laws of Mississippi and of the laws of Louisiana, and that said pretended assign-

if ever made, *was* done in fraud of plaintiff's rights, and in fraud of the creditors of the said defendants, without any consideration whatever; and avers that if said assignment was ever made, as alleged, (which is denied) then that said pretended assignment was made by fraud and collusion between the said defendants and intervenors, and that this respondent, and the said debtors garnisheed, had no notice thereof. Wherefore the plaintiff prays that the said petition of intervention be rejected, and prays for judgment against all intervenors, and the costs of the said intervenors, and for general relief, &c.

Judgment by default.

J. R. MARSHALL
vs.
G. G. R. R. & BANKING Co.

June 17*th*, 1844.

In this case, judgment by default was rendered against Thomas M. and E. D. Newell, garnishees.

Admissions of defendants and intervenors.

JOHN R. MARSHALL
vs.
GRAND GULF RAILROAD and Banking Company.

9th district court, parish of Tensas, June term, 1844.

It is admitted by the defendants and intervenors, that the fifty-four bank bills or notes sued on in the above entitled cause, are genuine bills issued by the defendants as currency; and that the signature of J. Callender, signed and attached to each of said bills, are genuine, and that said Callender was an acting cashier for the defendants, and signed the said bills in that capacity. 2d. It is admitted by the defendants and intervenors, that the signatures of J. P. Parker and B. Hughes, signed and attached to each of said bills, are genuine, and that the said Parker and Hughes were acting as Presidents for the said defendants, and signed the said bills in that capacity. 3d. It is admitted by the defendants and intervenors, that the signatures of *Clar.* A. Whiteman, endorsed on the back of each of said bills, are genuine, and that the said Whiteman was acting teller for the said defendants at the date of the 8th May, 1838, and signed the same in that capacity. 4th. It is admitted by the defendants and intervenors, that James J. Amonett was the attorney in fact for the plaintiff, Marshall, and that said Amonett was legally authorized to make the affidavit and sue out the writ of attachment in this case, and the printed laws of Mississippi are admitted in evidence.

H. H. STRAWBRIDGE,
For def'ts and intervenors.
DUNLAP & AMONETT,
For plaintiff.

Notices.

GRAND GULF, *March 9th*, 1842.

To Edward D. Newell, esq.

SIR: You are hereby notified that the President and Directors of the Grand Gulf Railroad and Banking Company have assigned to John Lindsey and Alfred Ingraham, in trust for the benefit of their creditors, all their interest in the debts due by you to said company, either as principal, joint drawer, or endorser, and all judgments obtained on the same; and that said assignees, or their attorneys, alone are authorized to receive and receipt for the same.

JOHN LINDSEY,
ALFRED INGRAHAM.

I hereby acknowledge the service of the foregoing notice this 20th March, 1842.

E. D. NEWELL.

GRAND GULF, *March 9th*, 1842.

To Thomas M. Newell.

SIR: You are hereby notified that the President and Directors of the Grand Gulf Railroad and Banking Company have assigned to John Lindsey and Alfred Ingraham, in trust for the benefit of their creditors, all their interest in the debts due by you to said company, either as principal, joint drawer, or endorser, and all judgments obtained on the same; and that said assignees, or their attorneys, alone are authorized to receive and receipt for the same.

JOHN LINDSEY,
ALFRED INGRAHAM,
Assignees.

I acknowledge service of a copy of the within notice, this 20th March, 1842.

THOMAS M. NEWELL.

Statement of facts.

J. R. MARSHALL
vs.
G. G. R. R. BANKING CO. } Statement of facts.

Plaintiff's evidence.

Statement of facts entered into as per agreement. (See page 12.)

Bills sued on, marked from No. 1 to 54 inclusive.

Charter and amended charter of the G. G. R. R. and B. Co., "A and B." (Page 24.)

Statutes of Mississippi in Howard and Hutchinson's digest. Page 375, sec. 16, "C." (Page 48.)

Writ of attachment and sheriff's return, "D." (Page 5.)

Intervenors' and defendants' evidence.

Laws of Mississippi, Howard and Hutchinson digest. Page 610, sec. 34, act of 1837, "E." (Page 41.)

1332.

same book. Page 343, sec. 3, date of act June 13th, 1822, (Page 41.)

Same book, sec. 12 and 10 of the act of 1833, page 468, "G." (Page 42.)

Act of assignment with the certificate attached, "H." (Page 49.)

Mr. Ingraham called by defendants and intervenors, says he is intervenor as trustee; says he has no shadow of interest in the event of this suit; he only acts as trustee, and for the preservation of the property of others; witness says he has no liability for costs; he has ample funds in his hands to pay them.

Witness says the reservation of the debts not assigned to the trustee in the schedule, was for the purpose of retaining the chartered rights of the bank, and keeping up the board of directors; the notes embraced in that schedule not transferred by the total insolvency of the parties.

Cross examined. Says, on the 10th of February, 1842, John Lindsey was the president of the bank, and was the same Lindsey who was the trustee; witness says, Lindsey, as the presiding officer of the board, he executed the deed of trust and affixed the seal, and individually he accepted the trust; witness says, he is the same man who is named as the president of the bank, and was so when the trust was made to him which he accepted, having executed it as president and affixed the seal, and accepted it individually; witness says, none of the trustees, he or any of the others, have given security for their performance.

The signatures to documents J, and K, and L, admitted.

Notices to garnishees J, K, and L. (Pages 8 and 13.)

Plaintiff's evidence.

Laws of Mississippi in Howard and Hutchinson's digest. Page 343, sec. 3, "M." (Page 41.)

Same book, page 344, sec. 5, "N." (Page 48.)

Act of 1840, of Mississippi, page 15, sec. 7, requiring bank to pay specie, "O." (Page 63.)

Colonel Coffee, called by plaintiff, says, he thinks the bank assigned to James H. Manney, a debt due to the bank by John Routh, with endorsers; thinks the debt was not less than $18,000; thinks it was after the assignment of the bank to trustees, but is not certain as to the time of assignment; if it was after the assignment to trustees, the assignment was made by the trustees; Routh's debt was afterwards settled; thinks Routh settled with the bank; did not see the money paid, but saw the receipt; Mr. Gordon and witness made this debt their own; Mr. Routh paid the money in the name, and the receipt was given to them; witness cannot say what the object was in making the assignment to Manney; witness was a director of the bank, and so tired and disgusted with the affairs that he did not inquire much into it; the bank had suspended specie payment since 1837, and never resumed; witness was a director at the time of the assignment to trustees, and attended the board; the assignment was drawn and read before he entered the room; it was read to witness; witness and Mr. Hamilton, another

director, objected to the assignment being made, for the reason that he thought corporations should have no power of individuals, and was opposed to their making the assignment: the president, and others of the board, stated that there was a bill pending in the legislature, known as Briscoe's bill, which, if it should pass, would injure the stockholders, and witness and Hamilton agreed to the assignment provided the bill should not pass, and witness understood that if the bill should not pass the instrument was not to be recorded; in a few days afterwards witness found the bill had not passed; witness asked Mr. Hamilton to go and prevent its record; he went, and returned, and said he found it had been recorded; Mr. Hamilton and witness came to the conclusion to enter a protest against the assignment, but neither being expert at such things concluded to let it go; witness, there were as many as six or eight opposed to him and Hamilton; thinks there were as many as six present.

Cross examined. Says, he thinks Mr. Ingraham signed the receipt for the Routh debt, but is not certain who signed the receipt; he saw by the receipt that the debt was paid, and he put the receipt away and has not seen it since; so far as he recollects, the Briscoe bill was stated by the other stockholders of the bank, who advocated the assignment, to be of a ruinous tendency to the bank.

John Routh, called by plaintiff. Witness says, he owed the Grand Gulf Railroad and Banking Company three notes of $7000 each, with Messrs. Gordon & Coffee, joint drawers, with a mortgage; witness got a notice from the assignees, Lyndsey and Ingraham, and one from Manney, that Manney was the owner, holder of the notes; these notes have been paid; the money was paid to Ingraham to satisfy the debts; whether it was received for the bank or Manney, witness *witness* does not know; at the time of the assignment the bank paper was below par; witness bought the money for 55 cents on the dollar; has understood that it has sold as low as 22 cents on the dollar; the co-drawers, Gordon & Coffey, had assumed to the bank what witness owed the bank, and witness became responsible to Coffee & Gordon.

Colonel Coffee called again, says, he never saw the agreement, but understood Manney was to take his debt in Grand Gulf money; witness knows when Lindsey managed the bank; he never promised to pay in any thing else than the money of the Grand Gulf Bank; witness was director about three years, and he knew no other attorney for the bank; at that time witness understood that he was to get $1,000 per annum.

Maxwell W. Bland, called by plaintiff, says, that at the time of the assignment of the bank the paper of the bank was depreciated; it was then thought that the bank was in a bad condition.

Mr. Ingraham, called again by defendant and intervenors, says, the object of the assignment of the Routh debt to Manny was as follows: He, Manny, became security for the assignee for court costs, in the parish of Claiborne, for some $4,000; and also as security on several bonds for the trial of the right of property; all this was in specie; he required security of the assignees in consequence of the size of those responsibilities, and they assigned him those notes of Routh, Gordon, and Coffey. Those

were placed in his hands according to the assignment, and returned him to the assignees upon deposit for collection for the facility of the debtors. Witness says that it is to his knowledge that a great majority of the stockholders and of the creditors of the institution approved of the assignment of the bank, and still approve of it; witness says he has conversed with all the stockholders whom he knew at the south, and they wish the assignment maintained. There are heavy amounts both of stock and the obligations of the bank held in the north; witness has also conversed with heavy creditors in the north, and they approve it.

Whole act of 21st February, 1840, of the State of Mississippi, requiring the several banks to pay specie, and other purposes, offered by plaintiff, "P." (Page 62.)

Briscoe's bill, spoken of by Genl. Coffee, offered by defendant and intervenors, "Q." (Page 43.)

I do hereby certify, that the above contains all the evidence adduced by the parties, and taken down by the court.

E. K. WILSON,
Judge 9th district.

Plaintiff's bill of exceptions.

J. R. MARSHALL
vs.
G. G. R. R. & B. Co.

Ninth district court, parish of Teneas, June term, 1844.

Be it remembered, that on this, the 18th day of June, 1844, the above cause was called up for trial, and the defendants and intervenors offered in evidence documents purporting to be an assignment from the President, Directors, and Company of the Grand Gulf Railroad and Banking Company to John Lindsey, Alfred Ingraham, and George Read, to approve the assignment; which was objected to by plaintiff's counsel, upon the grounds:

1st. Because the said pretended assignment was never acknowledged or proven in accordance to the laws of Mississippi, when it purports to have been made.

2d. Because it is not shown that said document was legally certified and authenticated according to the laws of Congress.

3d. Because the officer, who purports to take the affidavit of the witnesses, subscribed to the amended assignment, is not *not* shown to be an official officer of the State of Mississippi, where it purports to have been proven.

4th. Because the document offered is a copy of a copy, and the original was not proven to be lost, but in fact was in existence and in court; all of which objections *was* overruled by the court, and the documents admitted as evidence; to which plaintiff, by his counsel, excepted to the opinion of the court, and tenders this his bill of exceptions; and prays the signature of the judge, which is signed accordingly.

And be it further remembered, that on the trial of this cause on the

said day, the defendants and intervenors offered to prove [illegible] intervenors, by Alfred Ingraham, a party of record in the suit of intervention, all of which testimony was objected to by plaintiff's counsel, upon the grounds:

1st. Because the said Ingraham is a party plaintiff of record in this suit of intervention, and directly interested in the termination of this suit, and incompetent to testify in his own behalf.

2nd. Because the said Ingraham, by his own statement, could not prove that he was disinterested in the event of this suit.

3d. Because the said Ingraham, one of the intervenors and party plaintiff of record, who claims (as plaintiffs contend) to be the owner of all the property attached in this suit, could not give in testimony for his own benefit; all of which objections *was* overruled by the court, and the testimony admitted; to which plaintiff, by his counsel, excepted to the opinion of the court, and tenders this his bill of exceptions; and prays the signature of the judge, which is signed accordingly.

E. K. WILSON,
Judge 9th district.

Agreement of parties.

J. R. Marshall
vs.
Grand Gulf R. R. & B. Co. } No. 11.

9th district court, in Tensas parish.

It is agreed that the charter of defendants, their assignment to intervenors, the bank notes sued on, and the laws of Mississippi offered in evidence, be produced in the original, in the Supreme Court, in case of appeal, and need not be copied into the record; a note to be made by the clerk of the various laws offered at the proper place in the transcript.

DUNLAP, *for Plaintiff.*
H. H. STRAWBRIDGE,
For defendants and intervenors.

Extract from the minutes.

J. R. Marshall
vs.
Grand Gulf R. R. & B. Co.

In this case the parties went to trial this day, June 18th, 1844.

Judgment.

J. R. Marshall
vs.
Grand Gulf R. R. & B. Co., Alfred Ingraham and George Read, assignees, intervenors. } No. 11.

Tensas district court, June term, 1844.

this case the law and the evidence being in favor of the plaintiff, and against the defendant and intervenors, it is therefore ordered, adjudged, and decreed, that the plaintiff do recover of the defendants, the Grand Gulf Railroad and Banking Company, the sum of five thousand four hundred dollars, ($5,400,) with interest thereon at the rate of eight per cent. per annum, from the 8th day of May, A. D. 1838, till paid; and costs of this suit, with lien and privilege in favor of said plaintiff, upon the following property, rights, and credits, attached as the property of the defendants, viz: "The value of an execution now in the hands of the sheriff of this parish, in favor of said bank, against James G. Gordon, Thomas M. Newell, and E. D. Newell, issued upon a debt and judgment, for three thousand and seventy dollars, with eight per cent. interest, from the 31st January, 1840; also all the rights and credits of said defendants arising from a conventional mortgage, in favor of said bank, for the sum of ten thousand five hundred and thirty-eight $\frac{41}{100}$ dollars, as recorded April 30th, 1841, as appears by the certificate of the recorder of mortgages for the parish of Concordia, dated 29th day of March, 1843, as appears by the process of attachment and sheriff's return, on file in this suit; and it is further ordered, that the said property, rights, and credits, be sold according to law to satisfy this judgment; and it is further ordered, that the claim and demand of the said intervenors, Alfred Ingraham and George Read, be rejected at their costs; and that the garnishees, Jas. G. Gordon, Thos. M. & E. D. Newell, be decreed to be indebted to the defendants, payable in said Grand Gulf Bank money, or obligations in solido, in the sum of $3,070, with 8 per cent. interest, from 31st January, 1840; and the said Thos. M. & E. D. Newell be decreed to be indebted to said defendants in the sum of $10,538 41, payable in notes or other obligations of said bank; and that the said Gordon and Thos. M. Newell hold the property or fund subject to the execution or other *or other* order of this court. Read and signed in open court this 20th June, 1844.

E. K. WILSON,
Judge 9th district.

Motion and order of appeal.

J. R. MARSHALL
vs.
G. G. R. R. & BANKING CO.

9th judicial district court, in parish of Tensas.

On motion of H. H. Strawbridge for defendants and intervenors, it is ordered that a suspensive appeal be allowed to defendants, on their giving bond in the sum of twelve thousand five hundred dollars, to cover principal and interest, with security, conditioned as the law directs; and that intervenors take a devolutive appeal on giving similar legal security in the sum of one hundred and fifty dollars; the appeal to be returnable to the supreme court of Alexandria on the first Monday of October, 1844.

Consent in relation to appeal.

J. R. MARSHALL
vs.
G. G. R. R. & BANKING CO.

9th judicial district court, in parish of Tensas.

I consent that the time usually given for taking a suspensive appeal be extended, and that the defendant have thirty days from the adjournment of court (June 20th, 1844,) to give security for a suspensive appeal.

J. DUNLAP, *for plaintiff.*

Appeal bond of defendants.

Know all men by these presents, that we, the President and Directors of the Grand Gulf Railroad and Banking Company, as principals, and Maxwell L. Bland and Emeline Bland, as sureties, are held and firmly bound unto John R. Marshall, his executors, administrators, and assigns, in the sum of $12,500, twelve thousand five hundred dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated in the parish of Tensas, on the 28th day of June, in the year of our Lord one thousand eight hundred and forty-four.

Whereas the above bounden President and Directors of the Grand Gulf Railroad and Banking Company have entered a motion of appeal from a final judgment rendered against them on the 19th day of June, 1844, in the suit of John R. Marshall vs. the President and Directors of the Grand Gulf Railroad and Banking Co., in the ninth judicial district court of the State of Louisiana, holding sessions in and for the parish of Tensas, said suit being No. 11 on the records:

Now, the condition of the above obligation is such, that the above bound President and Directors shall prosecute their appeal, and shall satisfy whatever judgment may be rendered against them; or that the same shall be satisfied by the proceeds of their estate, real or personal, if they be cast in the appeal; otherwise, that the said Maxwell L. Bland and Emeline Bland, as securities, shall be liable in their place.

A. INGRAHAM, *Pres't*, [SEAL.]
M. W. BLAND, [SEAL.]
EMELINE BLAND. [SEAL.]

Approved and filed July 9th, 1844.

B. F. DUNLAP, *Clerk.*

Appeal bond for costs.

Know all men by these presents, that we, the assignees of the Grand Gulf Railroad and Banking Co., as principals, and Stephen M. Routh, as surety, are held and firmly bound unto John R. Marshall, his executors, administrators, and assigns, in the sum of one hundred and fifty dollars, ($150;) for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with

...dated in the parish of Tensas, on the 28th day of June, ... year of our Lord one thousand eight hundred and forty-four.

Whereas [the] above bound assignees have this day filed a petition of appeal from a final judgment rendered against them in the suit of John R. Marshall vs. the President and Directors of the Grand Gulf Railroad and Banking Co., in the ninth judicial district of the State of Louisiana, holding sessions in and for the parish of Tensas, which decree was rendered on the 19th day of June, 1844, the suit being No. 11 on the record:

Now, the condition of the above obligation is such, that the above bound assignees shall prosecute their appeal, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise, that the said Stephen M. Routh, as surety, shall be liable in their place.

ALFRED INGRAHAM, [SEAL.]
GEO. READ, [SEAL.]
STEPHEN M. ROUTH. [SEAL.]

Approved and filed July 9th, 1844.

B. F. DUNLAP, *Clerk*.

Clerk's certificate.

JOHN R. MARSHALL vs. GRAND GULF R. R. & B. Co. } No. 11.

Ninth district court, parish of Tensas.

I, Benjamin F. Dunlap, clerk of said court, certify the foregoing to be a true and correct transcript of all the documents filed, all the proceedings had, and all the evidence adduced in the above entitled cause, now on file and of record in said court.

Witness my hand and the seal of said court, this 30th day of July, A. D. 1844.

BENJ. F. DUNLAP, *Clerk said court*.

Waiver.

The production in the supreme court of the G. G. Bank notes sued on is waived by the counsel of plaintiffs.

J. DUNLAP, *Attorney for plaintiff*.

Supreme court. Filed October 9th, 1844.

ALPH. LASTRAPES, *Clerk*.

Charter of the Grand Gulf Railroad and Banking Company, with amended charter, &c.

An act to incorporate the Grand Gulf Railroad and Banking Company.

Section 1. Be it enacted by the Legislature of the State of Mississippi, That for the purpose of establishing a railroad and banking company at the town of Grand Gulf, books may be opened for subscription

of stock, in the town of Grand Gulf, under the superinte[illegible] liam Bridgers, Albert Sessions, Edward Newell, and G[illegible] and in the town of Port Gibson, under the superintendence of H[illegible] Carpenter, Benjamin Hughes, H. O. Anderson, and Robert Wilson, who are hereby appointed commissioners for that purpose. The books shall remain open till the sum of one hundred and fifty thousand dollars are subscribed, in shares of one hundred dollars each. The money thus subscribed shall be paid—one-fourth part thereof at the time of subscribing; one-fifth part thereof as soon as the company may commence operation; and give notice thereof, by advertisement in some newspaper published in Claiborne county, at least thirty days previous to the day when payment will be required; and the remaining three-fifth parts thereof shall be paid in three equal instalments of three, six, and nine months thereafter.

Sect. 2. Be it further enacted, That, so soon as the sum of one hundred and fifty thousand dollars shall be subscribed, the subscribers, and their successors and assigns, shall be a body politic and corporate, by the name and style of the "President and Directors of the Grand Gulf Railroad and Banking Company," and shall so continue until the last day of December, in the year one thousand eight hundred and sixty-three. And by that name they shall be capable in law of purchasing and possessing lands, tenements, and hereditaments, and personal estate of any kind whatever, to an amount not exceeding the sum of one million of dollars, besides the cost of constructing the railroad and appurtenances thereto hereinafter mentioned, and the same may sell and dispose of at pleasure. And they shall, by that name, be capable and liable to sue and be sued, plead and be impleaded, in any suit or action in law or equity. And they may also ordain, establish, and put in execution such by-laws, ordinances, and regulations, not contrary to the laws of this State or of the United States, as they may deem necessary and expedient; and in general do all such acts, and exercise such powers, as are usually incident to bodies politic and corporate.

Sect. 3. Be it further enacted, That as soon as the sum of one hundred and fifty thousand dollars shall be subscribed, the commissioners shall advertise the same in some newspaper published in Claiborne county, and call a meeting of the subscribers at some convenient place in the town of Grand Gulf, and at a time to be specified in the advertisement. The subscribers, at such meeting, shall proceed to select for themselves a President, who shall all of them continue in office for the term of one year, and until their successors shall be elected and qualified; at the end of which term, their successors shall be in like manner elected for another term of one year, and so on until the dissolution of the corporation.

Sect. 4. Be it further enacted, That the said company be, and they are hereby, invested with all the rights, privileges, and powers that may be necessary to enable them to construct, continue, and keep in repair a railroad, extending from the town of Grand Gulf to the town of Port Gibson, in Claiborne county; and to this end they may purchase of the United States, or of individuals, any lands, or the use and occupation

they may deem necessary and expedient. And in case they cannot agree with the owners of lands upon the terms of purchase, or in case the owner or owners shall be under the age of twenty-one years, they may petition the circuit court of Claiborne county to empannel a jury of twelve freeholders of said county, who shall be sworn to view and value such lands without favor or partiality, and report their valuation to the circuit court; and the court shall thereupon cause a conveyance of the land to be made to the President and Directors of the Grand Gulf Railroad and Banking Company, and adjudge the assessed value thereof to the owner of the land against the company.

Sect. 5. Be it further enacted, That said company shall cause to be constructed as many sets of tracks on said railroad, and all such structures, machines, vehicles, and carriages necessary for passage and transportation, and do all other things appertaining thereto, as may be lawful and promotive of the purpose of this act.

Sect. 6. Be it further enacted, That the said company be, and they are hereby, authorized to adopt and establish such rates of toll and charges for passage and transportation, as in their judgment shall best comport with the interest of the company and the community at large: Provided, That the rates of toll and charges shall be so established that the dividends of the profits shall not exceed the rate of fifteen per centum per annum on the capital vested in said railroad and appurtenances, after deducting all current expenses and charges for keeping the same in repair and operation; and, that this proviso may not be evaded, it shall be the duty of the said president and directors to keep, or cause to be kept, a separate and distinct set of books of records and accounts, in which shall be clearly stated the debts, and credits, and transactions relcting to the business and operation of the railroad; and it shall be the duty of the president and directors to make, or cause to be made, a separate, full, and complete report of the cost of constructing said railroad and its appurtenances, to the legislature at the first called session after the completion of said railroad; and also to report to the legislature, at each regular session thereafter, a separate, full, and correct statement of the costs and charges of keeping the same in repair and operation, and of the profits arising therefrom; and, if it shall appear from such report that the nett profits of the railroad amount to more than fifteen per centum per annum on the capital invested in the construction thereof, and its appurtenances, the surplus shall be paid into the treasury of the county of Claiborne; subject, however, to be drawn out of the treasury by the president and directors to supply any deficiency of a profit of fifteen per centum per annum that may be shown by any subsequent report.

Sect. 7. Be it further enacted, That if the railroad herein contemplated to be built shall not be commenced within two years, or if it shall not be completed and set in operation within four years after said company shall become incorporated, and shall not be kept in repair, this charter shall be ipso facto forfeited and void.

Sect. 8. Be it further enacted, That immediately after the election and qualification of the president and directors, if their capital stock

shall not have been subscribed for, they shall give notice, by advertisement, of the time and place of opening books for further subscriptions of stock, and may, from time to time, so receive subscriptions, till the capital stock of said company shall amount to the sum of one million of dollars, exclusive of the costs of constructing the railroad and its appurtenances. The subscriptions received under the provisions of this section shall be made on the following terms, to wit: one-fourth thereof shall be paid in at the time of subscribing, and the residue at such times as shall be prescribed by the president and directors: Provided, the whole thereof shall be paid in twelve months from the date of the subscription.

Sect. 9. Be it further enacted, That the president and directors of said company may appoint a cashier, and such number of clerks and other agents as they may think proper, who shall respectively enter into bonds, with security, payable to the President and Directors of the Grand Gulf Railroad and Banking Company, in such penalty as the president and directors may require, conditioned for the faithful performance of their duties as such.

Sect. 10. Be it further enacted, That the stock of said company shall be assignable and transferable according to such rules as shall be prescribed in that behalf by the laws, regulations, and ordinances of the same.

Sect. 11. Be it further enacted, That not less than a majority of the directors, of whom the president shall be one, shall constitute a board for the transaction of business, discounts excepted; and for the discounts not less than five directors, of whom the president shall be one, shall constitute a board: Provided, that in all cases of sickness or necessary absence of the president, his place may be supplied by any other director whom the board of directors may appoint.

Sect. 12. Be it further enacted, That in all cases of vacancy in the board of directors, occasioned by death, resignation, or removal from the State, the vacancy may be supplied by the directors until the next succeeding annual election.

Sect. 13. Be it further enacted, That the said company shall not take more than seven per centum per annum upon any of its loans upon promissory notes, payable within twelve months from the date of such loans; nor shall it take more than eight per centum per annum upon any of its loans on promissory notes having a longer time to maturity than twelve months after the date of such loans. The company shall, after the first twelve months from the commencement of their issues, be required to loan one-third part of the capital stock on loans of twelve months, renewable at the discretion of the directors. No director of said company shall, at any one time, have a permanent loan of more than four thousand dollars, nor for a longer period than twelve months. No stockholder shall receive a dividend upon a greater amount than he shall have paid in; nor shall any stockholder, who may be in arrears for stocks, be entitled to receive any dividend until such arrearages be paid; and he shall moreover be liable to be sued for such arrearages by the company, in any tribunal having cognizance thereof.

Sect. 14. Be it further enacted, That semi-annual dividends shall be made of so much of the profits of said company, arising from the banking business thereof, as the directors shall deem advisable.

Sect. 15. Be it further enacted, That the said president and directors shall have power to deal in exchange, and in bank and other public stocks. They may issue notes signed by the president and countersigned by the cashier, for sums not less than five dollars, which shall be obligatory upon the company, provided the notes so issued shall at no one time exceed twice the amount of the capital paid in.

Sect. 16. [Be it further enacted,] No person not being a citizen of the United States shall be eligible as a director of said company, and in all elections by stockholders, each stockholder may vote by proxy, and be entitled to as many votes as he has shares of stock.

Sect. 17. Be it further enacted, That the president and directors of said company shall keep a book or books, in which all proceedings of the board shall be entered and recorded, as well as the number of votes including the yeas and nays on every question (when demanded by a member of the board) with the names of the voters. Any three of the stockholders may, within one month preceding each election for directors, examine the said book, on application for that purpose to the president or cashier of the company. And the legislature shall have power at all times to appoint commissioners to examine all the books of said company, and all the affairs thereof, to interrogate the president and cashier thereof, who shall be bound to disclose to the commissioners all matters in relation to the officers of said company, more especially the amount of specie on hand, the amount of its notes in circulation, that of its deposits, and that of debts due to it, for the purpose of ascertaining the situation of said company, and to report the same to the legislature.

Sect. 18. Be it further enacted, That so soon as five hundred thousand dollars of the capital stock is subscribed and paid in, the bank shall establish a branch at the town of Gallatin, in the county of Copiah. And books shall be opened in said town of Gallatin for subscriptions to the capital stock, at the same time and under the same regulations as prescribed in this act, and under the superintendence of William P. Rose, F. W. Hubert, W. S. Scott, and Benjamin Kennedy.

Sect. 19. [Be it further enacted,] This charter shall not be subject to be altered by the legislature, except by the assent of two-thirds of the directors of the company.

Sect. 20. And be it further enacted, That the capital stock of said Grand Gulf Railroad and Banking Company shall, from time to time, as the legislature may hereafter direct, be subject to be taxed annually to an amount not exceeding twenty-five cents on each hundred dollars thereof. And such tax shall be paid into and constitute a part of the literary fund.

Approved, December 23d, 1833.

H. G. RUNNELS.

At a meeting of the stockholders of the Grand Gulf Railroad and

Banking Company, held on the 13th December, 1834, the [illegible] gentlemen were elected:

Directors.

Benjamin Hughes,	D. G. Humphreys,	James H. Maney,
James Gordon,	E. W. Putnam,	James P. Parker,
Hugh Watt,	Samuel Cobun,	Jos. H. Moore,
Elias Bridgers,	R. W. Campbell,	Israel Loring.
F. W. Turpin,		

President.

Benjamin Hughes.

An act (not accepted by the bank) to amend the charter of the President and Directors of the Grand Gulf Railroad and Banking Company.

Section 1. Be it enacted by the legislature of the State of Mississippi, That the President and Directors of the Grand Gulf Railroad and Banking Company be, and they are hereby, vested with all the rights, privileges, and powers, that may be necessary to enable them to construct, continue, and keep in repair, a railroad, extending from the town of Grand Gulf to the town of Port Gibson, in Claiborne county; and to this end said company may forthwith enter upon any lands that include, or shall include, the route that now is, or shall hereafter be, adopted by them, or their engineer, for said railroad, not exceeding one hundred feet in width, and possess, occupy, and use the same, without any let, hindrance, or prevention, of any person, or from any authority whatever: Provided, that in passing hills or valleys, the said company are authorized to extend said width so far as may be necessary to effect the object. The said company, if they can agree with the owner, may purchase any lands that they may deem necessary and expedient; and in case they cannot agree with the owners of lands upon the terms of purchase, or in case the owner or owners shall, under any legal disability to contract, the said company, or on their failure, the owner or owners may petition the circuit court of Claiborne county to summon and empannel a jury of twelve freeholders of said county, who shall be sworn to view and value such lands, and assess damages, if any be sustained, without favor or partiality, and report their valuation and assessment to the said circuit court: Provided, that in making said valuation and assessment, the said jury shall take into the estimate the benefit resulting to the owners from constructing said railroad through, along, or near the property of such owner, but only toward the extinguishment of the claim for damages; and the said circuit court shall thereupon cause a conveyance of the land to be made to said company, and the said owner shall be entitled to the amount of the valuation and assessment reported by the jury, and the said court shall grant judgment and execution therefor against said company.

Sect. 2. Be it further enacted, That, if any person or persons shall wilfully, by any means whatever, injure or destroy any part of said railroad, or any part of their works, carriages, vehicles, or machines, such

or persons, so offending, shall each of them, for every such offence, be liable for all such damages occasioned thereby, and may furthermore be proceeded against by indictment or information, at any time within six months after such offence be committed, and be punished by a fine not exceeding one thousand dollars, or imprisonment not exceeding twelve months, or both, at the discretion of the court.

Sect. 3. Be it further enacted, That the said corporation, together with all other banking institutions in this State, shall at all times be obliged to redeem their notes in specie; and if at any time any note or bill, of such banking institution, shall be presented for payment at any of their respective banking houses or offices, where the same is made payable, and payment shall be refused, the cashier, teller, or clerk, to whom presented, shall endorse thereon the date of such presentment, under the penalty of five hundred dollars, to be recovered by the holder in an action of debt; and said note or bill shall thereupon bear interest at the rate of twelve and a half per cent. per annum, until paid.

Sect. 4. Be it further enacted, That the said company may increase their capital stock by a further subscription of one million of dollars, to be divided into shares of one hundred dollars each; and to be subscribed for in the manner and on the terms designated in the original charter; and the branch to be established in the town of Gallatin, shall be entitled to a banking capital of three hundred and fifty thousand dollars, within six months from the completion of such additional subscription.

Sect. 5. Be it further enacted, That the number of votes, to which the stockholders of said bank shall be entitled in voting for directors, shall be according to the number of shares he, she, or they, respectively, shall hold, in the proportion following, that is to say, for each and every share, not exceeding ten shares, one vote; for every two shares above ten, and not exceeding fifty, one vote; for every five shares above fifty, not exceeding one hundred, one vote; and for every ten shares, above one hundred, one vote; but no person, copartnership, or corporation, shall be entitled to a greater number than two hundred votes, and no share or shares shall confer the right of voting, which shall not have been holden three calendar months previous to the day of election: Provided, that the stockholders shall have the right of voting by proxy.

Signed, JOHN L. IRWIN,
Speaker of the House of Representatives.
JOHN A. QUITMAN,
President of the Senate.

Approved, February, 1836. CHARLES LYNCH, *Governor.*

AN ACT to amend the charter of the Grand Gulf Railroad and Banking Company.

Section 1. Be it enacted by the legislature of the State of Mississippi, That the seventh section of an act entitled an act to incorporate the Grand Gulf Railroad and Banking Company be, and the same is hereby, repealed.

Section 2. Be it further enacted, That it shall be the duty of said company to complete the railroad contemplated in their original charter within two years after the expiration of the time limited in the said seventh section; and on their failure to do so, they shall forfeit all the rights, privileges, and powers derived from their original charter, or the amendment thereto.

Sect. 3. Be it further enacted, That when said company shall engage to make loans of money to be repaid in one, two, three, and four years, or more, from the date of such loans, they shall be allowed to discount the paper taken on such loans at the rate of nine per cent. per annum: Provided, That the paper taken on such loans may be taken at twelve months to maturity, and renewable; and provided, that the company may, at each renewal, require additional security as a pre-requisite thereto.

Sect. 4. And be it further enacted, That the said Grand Gulf Railroad and Banking Company shall increase the amount of its loans and discounts at its branch at Gallatin to three hundred and fifty thousand dollars, before any further loans or discounts are made at the said parent bank at Grand Gulf.

Sect. 5. And be it further enacted, That at no time shall the cashier of the branch of the Grand Gulf Railroad and Banking Company at Gallatin be a director in said branch bank.

Sect. 6. And be it further enacted, That the said cashier of the said Grand Gulf Railroad and Banking Company, at Grand Gulf, shall not be allowed, in the election of directors of said bank, to receive proxies, or represent the stock of any other stockholder than himself.

(Signed) JOHN W. KING,
Speaker of the House of Representatives.
A. L. BINGAMIN,
President of the Senate.

Approved, February 12th, 1838.

A. G. McNUTT, *Governor.*

AN ACT entitled an act "to amend an act entitled an act to incorporate the Grand Gulf Railroad and Banking Company," approved December 23d, 1833; and also to amend "An act entitled an act to amend the charter of the president and directors of the Grand Gulf Railroad and Banking Company," approved February 12th, 1838.

Section 1. Be it enacted by the legislature of the State of Mississippi, That it shall be lawful for the president and directors of the Grand Gulf Railroad and Banking Company to purchase of the owner or owners any lands that include or shall include the route that now is, or shall hereafter be, adopted, by them or their engineer, for said railroad; and in case said company or their agent, cannot agree with the owner or owners of such land upon the terms of purchase, and in case the said owner or owners shall be absent from this State, or under any legal disability to contract, then it shall be lawful for said company, at any regular or special term of the circuit court of Claiborne county, upon giving ten days previous notice, in writing, to said owner or owners, of

so to do, which said notice shall be served personally on the said owner or owners, or left at his, her, or their usual place of residence or business, if in this State; and if not in this State, then said notice shall be given by advertisement in some newspaper in said county, once in each week, for two weeks successively, to apply to the said circuit court, by petition, setting forth a particular description of the quantity of land required by said company, and the metes and bounds thereof; and the said court, upon such application, is hereby authorized and required to issue a special venire facias, directed to the sheriff of the said county, and returnable at such short day during the same term as shall be practicable and expedient, commanding him to summon twenty-four judicious freeholders of his county, not of kin to the parties or interested in the subject in controversy, to form a jury between the said company and the said owner or owners; and upon the return of the said venire, the first twelve of said jurors who shall appear and not be challenged, or set aside, shall be sworn or affirmed on the said jury; and in case the said pannel shall for any cause be exhausted before the number of twelve jurors shall be sworn, the said court shall forthwith order the said sheriff to summon a sufficient number of bystanders, being freeholders as aforesaid, to complete the said jury; and the said company, and the said owner or owners, shall be entitled to the same number of peremptory challenges, and to challenges for cause, as may be allowed on the trial of other civil suits in the said court; and the said jurors, being first duly sworn or affirmed that they will diligently inquire concerning the matter in controversy, and a true inquisition make, according to the best of their skill and judgment, without favor or partiality, shall proceed to view the land described in the said petition, and value the same, and shall also assess the damages, if any, which may be sustained by the said owner or owners by reason of the construction of the said railroad through, along, or near the property of the said owner or owners, taking into consideration the benefits resulting to said owner or owners towards the extinguishment of the claim for damages; and in case either of the said company, or the said owner or owners, shall desire to examine any witness or witnesses before the said jury, the said witness or witnesses shall be sworn and examined before the said jury in open court; and the said jurors shall make report to the said court in writing, under their hands, of the amount of the value of the said lands, and of the damages, if any, by them assessed; which valuation and assessment shall be final and conclusive upon the said company and the said owner or owners; and upon payment or tender to the said owner or owners of the amount of said valuation and assessment, or upon payment of the same into the said circuit court, all the said lands, tenements, rights, and privileges mentioned in the said petition shall be fully and absolutely vested in the said company, who shall become seized and possessed thereof, in like manner as the then late owner or owners was or were seized or possessed thereof, and shall have full power to enter upon and use the same for the construction of the said railroad; and the said court shall cause a conveyance of the said land to be made to the said company.

Sect. 2. Be it further enacted, That it shall be the duty of said company to complete the railroad contemplated in their original charter on or before the thirty-first day of December, A. D. one thousand eight hundred and forty-two; and on their failure so to do, they shall forfeit all the rights, privileges, and powers derived from their original charter and the amendments thereto.

Sect. 3. Be it further enacted, That the second section of "An act entitled an act to amend the charter of the Grand Gulf Railroad and Banking Company," approved February 12th, 1838, and all acts and parts of acts coming within the purview of this act be, and the same are hereby, repealed.

Sect 4. Be it further enacted, That it shall not hereafter be lawful for said company to issue post notes, or notes payable at a future time, as currency; or put any of such notes in circulation as currency; or to issue or re-issue, or put out from their counter, their notes or bills purporting on their face to be payable on demand, which said company shall be immediately unable to redeem; if demanded, in specie; or shall issue, re-issue, or pay out any such notes or bills whilst said company may continue the non-payment of their circulation in specie; nor shall it be lawful for said company, at any time after the first day of January, 1841, to refuse or fail to pay, on demand, in specie, any of its notes presented for payment now or then in circulation; and if said company shall, at any time hereafter, issue post notes, or notes payable at a future time as currency, or put any of such notes in circulation as currency; or to issue, re-issue, or pay out from their counter, their notes or bills, purporting on their face to be payable on demand, which said company shall be immediately unable to redeem, if demanded, in specie; or shall issue, re-issue, or pay out any such notes or bills whilst said company may continue the non-payment of their circulation in specie; or shall, at any time after the first day of January, 1841, refuse or fail to pay, on demand, in specie, any of its notes presented for payment, it shall be lawful for the legislature of the State of Mississippi, without the previous finding of the above facts, or any of them, by the verdict of a jury, or adjudged of by a court of competent jurisdiction, to amend or wholly repeal the charter of said company, and the several acts amendatory thereto, so far as the same confers banking powers: Provided, however, That the corporate capacity of said company, and all the rights, privileges, and powers to construct and continue a railroad, as designated in their charter, or in this or other acts amendatory thereto, shall enure and remain to said company and to their successors and assigns forever: And provided, also, that in case of the repeal of the banking privileges of said company, said company shall, notwithstanding, be enabled to sue for, and recover and collect the assets and dues of said company, with a view to the settlement and closing of their business as a bank.

Sect. 5. Be it further enacted, That this act shall take effect and be in force and effect from and after the acceptance of the same by the president and directors of said company, by a resolution of the board of directors to that effect, and evidenced by a copy of said resolution,

ed, and delivered to the Secretary of State, and by the Secretary of State filed in his office, and not before.

J. SPEIGHT,
Speaker of the House of Representatives.
GEO. B. AUGUSTUS,
President of the Senate.

Approved, February 15th, 1840.

A. G. McNUTT.

GRAND GULF RAILROAD AND BANKING COMPANY,
5th March 1840.

Resolved, unanimously, (eleven directors being present,) That an act entitled "An act to amend an act entitled an act to incorporate the Grand Gulf Railroad and Banking Company," approved December 23d, 1833; and also to amend "An act entitled an act to amend the charter of the President and Directors of the Grand Gulf Railroad and Banking Company," approved February 12th, 1838; passed by the Senate and House of Representatives of the State of Mississippi in general assembly convened, and approved on the fifteenth day of February, 1840, be, and the same is hereby, accepted as an amendment to the charter of the President and Directors of the Grand Gulf Railroad and Banking Company.

It is further resolved, That the cashier be, and he is hereby, authorized and required to transmit to the Secretary of State a copy of the foregoing resolutions, certified, under his hand and official name, to be a true copy thereof, and affix the seal of the corporation thereto.

(Signed) J. CALLENDER, *Cashier.*

[SEAL.]

THE STATE OF MISSISSIPPI,
Claiborne county.

Personally appeared before me, John W. Benton, one of the justices of the peace for the county of Claiborne, Joseph Callender, cashier of the "President and Directors of the Grand Gulf Railroad and Banking Company," who being duly sworn, deposed that the foregoing resolutions are truly copied from the journal and records of the company.

In testimony whereof he thereto set his hand and affixed the corporate seal of said company. Sworn to and subscribed at Grand Gulf, this sixth day of March, in the year of our Lord eighteen hundred and forty.

[SEAL.] (Signed) J. CALLENDER, *Cashier.*
(Signed) JOHN W. BENTON, *J. P.*

THE STATE OF MISSISSIPPI,
Claiborne county.

Personally appeared before me, John W. Benton, one of the justices of the peace for the county of Claiborne, John Lindsay, president of the "President and Directors of the Grand Gulf Railroad and Banking Company," who being duly sworn, deposed that Joseph Callender,

whose name is subscribed to the foregoing certificate, [illegible] said company, and is authorized to make the certificate and affix the corporate seal of said company thereto; and that the seal affixed thereto is the corporate seal of the "President and Directors of the Grand Gulf Railroad and Banking Company." Sworn to and subscribed at Grand Gulf, this sixth day of March, anno domini eighteen hundred and forty.

[SEAL.] (Signed) J. LINDSAY, *President.*
(Signed) JOHN W. BENTON, *J. P.*

I, Thomas B. Woodward, Secretary of State, certify that the foregoing sheets contain a true copy of an act, entitled "An act to amend an act entitled an act to incorporate the Grand Gulf Railroad and Banking Company," approved February 12th, 1833; and also to amend "an act entitled an act to amend the charter of the President and Directors of the Grand Gulf Railroad and Banking Company," approved February 12th, 1838, passed by the Senate and House of Representatives, and approved on the 15th day of February, 1840.

Also a true copy of the resolutions of the board of directors of the Grand Gulf Railroad and Banking Company, accepting the above act as an amendment to their charter; adopted by said board of directors on the 5th day of March, 1840. In print.

Also a true copy of the certificate of J. Callender, cashier, under the corporate seal of said company; also true copies of the acknowledgments of J. Callender, cashier, and J. Lindsay, president of said company, before John W. Benton, justice of the peace for Claiborne county, on the 6th day of March, A. D. 1840.

All the foregoing sheets contain true copies of the originals now on file in my office.

In testimony whereof I have caused the great seal of the State to be hereunto affixed, at the city of Jackson, on the 16th day of March, A. D. 1840. [L. S.]

(Signed) THOMAS W. WOODWARD,
Secretary of State.

I, Wilson Hemingway, secretary of State of the State of Mississippi, certify, that the preceding sheets contain a true copy of an act, entitled "An act to incorporate the Grand Gulf Railroad and Banking Company," approved December 23d, 1833; also an act to amend the charter of the President and Directors of the Grand Gulf Railroad and Banking Company," approved February, 1836; also an act to amend the charter of the Grand Gulf Railroad and Banking Company, approved February 12th, 1838; and also an act entitled an act to amend an act entitled an act to incorporate the Grand Gulf Railroad and Banking Company, approved December 23d, 1833; and also an act to amend "An act entitled an act to amend the charter of the President and Directors of the Grand Gulf Railroad and Banking Company," approved February 12th, 1838, and approved February 15th, 1840; all which have been compared by me with the original acts on file, and are correct.

whereof I have hereunto affixed the great seal of the [illegible] State. Given under my hand at the city of Jackson, this the [illegible] 8th day of April, 1844.

WILSON HEMINGWAY,
Sec. of State.

Extracts

From Howard & Hutchinson's digest of the Statutes of the State of Mississippi, as offered in evidence in the case of J. R. Marshall against the Grand Gulf Railroad and Banking Company, at the June term, 1844, of the ninth district court, parish of Tensas. Page 610, sec. 34; act of 1837.

"*E.*"

Copies of all recorded deeds, conveyances, bonds, and other instruments of writing, which are now, or may hereafter, by the laws of the State, be required or permitted to be recorded, shall, when certified by the clerk, in whose office the record of the same is kept, be received in evidence in any court of law or equity in this State, and be as available, without accounting for the absence of the original, as if the original deed, conveyance, bond, or other writing instrument were then and there produced and proved.

"*F*" & "*M.*"

Page 343, sec. 3, June 10, 1822.

All bargains, sales, and other conveyances whatsoever, of any lands, tenements, or hereditaments, whether they be made for passing any estate of freehold or inheritance, or for a term of years, and all deeds of settlement upon marriage, wherein either lands, slaves, money, or other personal thing shall be settled or covenanted, to be left or paid at the death of the party or otherwise; and all deeds of trust and mortgages whatever, which shall hereafter be made and executed, shall be void as to all creditors, and subsequent purchasers for valuable consideration without notice, unless they shall be acknowledge or proved, and lodged with the clerk of the county court of the proper county, to be recorded according to the directions of this act; but the same as between the parties and their heirs, and as to all subsequent purchasers, with notice thereof, or without valuable consideration, shall nevertheless be valid and binding.

"*G.*"

Page 468, sections 12 and 13; act of 1833.

Sec. 10. All deeds, mortgages, and other instruments of writing, now required by law to be recorded in the county court of this State, shall hereafter be recorded in the courts of probate of the respective counties, and the clerks of said courts of probate are authorized and required to do and perform all acts in relation thereto, which are now authorized and required to be done by the clerks of said county courts; the clerks of the several county courts shall deliver over to the clerks of the courts of probates of the respective counties all books, records, and

whose name is subscribed to the foregoing certificate, is [illegible] said company, and is authorized to make the certificate and affix corporate seal of said company thereto; and that the seal affixed thereto is the corporate seal of the "President and Directors of the Grand Gulf Railroad and Banking Company." Sworn to and subscribed at Grand Gulf, this sixth day of March, anno domini eighteen hundred and forty.

[SEAL.] (Signed) J. LINDSAY, *President.*
(Signed) JOHN W. BENTON, *J. P.*

I, Thomas B. Woodward, Secretary of State, certify that the foregoing sheets contain a true copy of an act, entitled "An act to amend an act entitled an act to incorporate the Grand Gulf Railroad and Banking Company," approved February 12th, 1833; and also to amend "an act entitled an act to amend the charter of the President and Directors of the Grand Gulf Railroad and Banking Company," approved February 12th, 1838, passed by the Senate and House of Representatives, and approved on the 15th day of February, 1840.

Also a true copy of the resolutions of the board of directors of the Grand Gulf Railroad and Banking Company, accepting the In print. above act as an amendment to their charter; adopted by said board of directors on the 5th day of March, 1840.

Also a true copy of the certificate of J. Callender, cashier, under the corporate seal of said company; also true copies of the acknowledgments of J. Callender, cashier, and J. Lindsay, president of said company, before John W. Benton, justice of the peace for Claiborne county, on the 6th day of March, A. D. 1840.

All the foregoing sheets contain true copies of the originals now on file in my office.

In testimony whereof I have caused the great seal of the State to be [L. S.] hereunto affixed, at the city of Jackson, on the 16th day of March, A. D. 1840.

(Signed) THOMAS W. WOODWARD,
Secretary of State.

I, Wilson Hemingway, secretary of State of the State of Mississippi, certify, that the preceding sheets contain a true copy of an act, entitled "An act to incorporate the Grand Gulf Railroad and Banking Company," approved December 23d, 1833; also an act to amend the charter of the President and Directors of the Grand Gulf Railroad and Banking Company," approved February, 1836; also an act to amend the charter of the Grand Gulf Railroad and Banking Company, approved February 12th, 1838; and also an act entitled an act to amend an act entitled an act to incorporate the Grand Gulf Railroad and Banking Company, approved December 23d, 1833; and also an act to amend "An act entitled an act to amend the charter of the President and Directors of the Grand Gulf Railroad and Banking Company," approved February 12th, 1838, and approved February 15th, 1840; all which have been compared by me with the original acts on file, and are correct.

whereof I have hereunto affixed the great seal of the State. Given under my hand at the city of Jackson, this the 8th day of April, 1844.

WILSON HEMINGWAY,
Sec. of State.

Extracts

From Howard & Hutchinson's digest of the Statutes of the State of Mississippi, as offered in evidence in the case of J. R. Marshall against the Grand Gulf Railroad and Banking Company, at the June term, 1844, of the ninth district court, parish of Tensas. Page 610, sec. 34; act of 1837.

"*E.*"

Copies of all recorded deeds, conveyances, bonds, and other instruments of writing, which are now, or may hereafter, by the laws of the State, be required or permitted to be recorded, shall, when certified by the clerk, in whose office the record of the same is kept, be received in evidence in any court of law or equity in this State, and be as available, without accounting for the absence of the original, as if the original deed, conveyance, bond, or other writing instrument were then and there produced and proved.

"*F*" & "*M.*"

Page 343, sec. 3, June 10, 1822.

All bargains, sales, and other conveyances whatsoever, of any lands, tenements, or hereditaments, whether they be made for passing any estate of freehold or inheritance, or for a term of years, and all deeds of settlement upon marriage, wherein either lands, slaves, money, or other personal thing shall be settled or covenanted, to be left or paid at the death of the party or otherwise; and all deeds of trust and mortgages whatever, which shall hereafter be made and executed, shall be void as to all creditors, and subsequent purchasers for valuable consideration without notice, unless they shall be acknowledge or proved, and lodged with the clerk of the county court of the proper county, to be recorded according to the directions of this act; but the same as between the parties and their heirs, and as to all subsequent purchasers, with notice thereof, or without valuable consideration, shall nevertheless be valid and binding.

"*G.*"

Page 468, sections 12 and 13; act of 1833.

Sec. 10. All deeds, mortgages, and other instruments of writing, now required by law to be recorded in the county court of this State, shall hereafter be recorded in the courts of probate of the respective counties, and the clerks of said courts of probate are authorized and required to do and perform all acts in relation thereto, which are now authorized and required to be done by the clerks of said county courts; the clerks of the several county courts shall deliver over to the clerks of the courts of probates of the respective counties all books, records, and

papers belonging to said county courts, so far as they appertain to the jurisdiction of said court of probate under the constitution and laws of this State; which said books, records and papers, shall be kept and preserved by said clerks of the courts of probate, and they are authorized and required to do and perform all acts in relation thereto, which are now authorized and required to be done by said clerks of the county courts.

The clerks of the court of probates are hereby authorized and required to do and perform all acts which are now authorized and required to be done by the clerks of the county courts, and registers of the orphan's court, not inconsistent with the constitution and laws now in force in this State.

Sec. 12. So much of the act entitled "An act to reduce into one the the several acts concerning last wills and testaments, the duties of executors, administrators, and guardians, and the rights of orphans, and other representatives of deceased persons," passed November twenty-sixth, one thousand eight hundred and twenty-one, as is now in force, and all subsequent existing acts in relation to the duties, powers, and jurisdiction of the orphan's court, be, and the same are hereby, extended to the courts of probate, so far as the same are not repugnant to the constitution, or do not conflict with the provisions of this act.

"Q."

An act to prescribe the mode of proceeding against persons pretending to exercise corporate privileges, under acts of incorporation, and for other purposes.

Sec. 1. Be it enacted by the legislature of the State of Mississippi, That it shall be the duty of each and every district attorney in this State, whenever he shall have reason to believe, or whenever the affidavit of one or more creditable person or persons, shall be presented to him, stating that he or they have good reason to believe, and do verily believe, that any incorporated bank, located within his district, has been guilty of a violation of any of the provisions of its charter, or has done, or omitted to do, any act or acts, the doing or omission of which would, in law, work a forfeiture of its charter, or is commanded or prohibited by its charter, or any statute of the State in relation to banks, forthwith to file a bill in the clerk's office of the circuit court of the county in which such bank shall be located, an information in the nature of a quo warranto against such bank, upon the filing of which information, it shall be, and is hereby, made the duty of the clerk of such court to issue the proper process against such bank, returnable to the term of the circuit court aforesaid, next succeeding the day on which such information shall be filed.

Sec. 2. Be it further enacted, that it shall be the duty of each and every district attorney in this State, whenever he shall have reason to believe, or whenever the affidavit of one or more creditable person or persons shall be presented to him, stating that he or they have good reason to believe, and do verily believe, that any corporation, person or persons, are exercising, using, and enjoying within the district of

...district attorney, without legal warrant and authority, the franchise of being a banking corporation, forthwith to file in the clerk's office of the circuit court of the county in which such franchise shall be so exercised, used, and enjoyed, an information in the nature of a quo warranto against the corporation, person or persons, aforesaid; upon the filing of which information, it shall be, and is hereby, made the duty of the clerk of said court to issue the process against such corporation, person or persons, returnable to the term of the circuit court aforesaid, next succeeding the day on which such information shall be filed.

Sec. 3. Be it further enacted, That when process shall be issued against any bank, upon information filed under the provisions of this act, the same shall be served by the sheriff or other proper officer, who shall execute the same by delivering a copy thereof to the president, cashier, or secretary of such bank; or if there be no such president, cashier, or secretary, or if the sheriff or other officer is unable to find them, then by leaving a copy of such process at the banking-house, or other place of business of said bank; and when process shall be issued against any person or persons, upon information filed in pursuance of the provisions of the second section of this act, such process shall likewise be served by the sheriff or proper officer, who shall execute the same by delivering a copy to every such person or persons whom he can find in his county, and by leaving a copy for those whom he is unable to find at the banking-house, or other place occupied for the purpose of executing the franchises aforesaid.

Sec. 4. Be it further enacted, That all information in pursuance of this act shall be docketed upon the common law issue docket, and shall be tried at the first term of the court after they shall be filed: *Provided*, the process issued against them shall have been served twenty days before the commencement of the court: *And provided*, that each party shall be entitled to continuance upon the proper showing; said causes shall have priority over all other civil causes upon the docket, and when an issue of fact shall be made up, it shall be tried by the ordinary jury in attendance upon the court in the same manner and under the same rules and regulations that govern upon the trial of civil causes.

Sec. 5. Be it further enacted, That the provisions of this act shall not extend to the funds which legitimately belong to the State of Mississippi, or to the Commercial and Railroad Bank of Vicksburg, or to the West Feliciana Railroad and Banking Company, so as to affect the railroads and their operations.

Sec. 6. Be it further enacted, That upon information being filed in pursuance of the provisions of this act, it shall be the duty of the clerk, as a matter of right, on the part of the State, to issue an injunction or injunctions to restrain all persons from the collection of any demands by said bank or banks, person or persons, as assignees or corporations, and all their officers and agents, or other person or persons, until the said information be finally tried and determined, and said injunction shall have the office and effect of an injunction in chancery; which injunction shall be served by the sheriff or other proper officer of the county in which said information may be filed upon such corporation, bank,

assignee or assignees, if any there be, person or persons, or their agents or agents, in like manner as injunctions in chancery are served.

Sec. 7. Be it further enacted, That none of the provisions of this act shall be so construed as to prevent any bank or corporation, assignee or assignees, or their officers or agents, from suing out attachments in the same manner and for the same cause that other creditors are allowed lawfully to do.

Sec. 8. Be it further enacted, That upon judgment of forfeiture against any bank or banks, corporation or corporations, person or persons, pretending to exercise corporate powers in this State, as contemplated by this act, the debtors of such bank or banks, corporation or corporations, person or persons, pretending to exercise corporate privileges, shall not be released by such judgment from their debts and liabilities to the same; but it shall be the duty of the court rendering such judgment, to appoint one or more trustees to take charge of the books and assets of the same; to sue for and collect all debts due such bank or banks, corporation or corporations, person or persons, pretending to exercise corporate powers, and to sell and dispose of all property owned by such bank or banks, corporation or corporations, person or persons, pretending to exercise corporate powers, or held by others for its or their use, and the proceeds of the debts when collected, and of the property when sold, to apply as may hereafter be directed by law to the payment of the debts of such bank or banks, corporation or corporations, or persons pretending to exercise corporate powers: *Provided further*, that the notes of any such bank or banks, corporation or corporations, or others pretending to exercise corporate powers, shall at all times be received in payment of any debts due the same.

Sec. 9. Be it further enacted, That such trustees shall give bond with good and sufficient security, in a penalty to be prescribed by the court, or determined by law, conditioned to diligently and faithfully collect the debts due such bank or banks, corporation or corporations, or person or persons pretending to exercise corporate powers, and to sell and dispose of the property belonging to the same, and the proceeds when collected to pay over as may hereafter be directed by law: *Provided, however*, that the compensation allowed to such trustees shall be paid in preference to all others, but shall in no case be chargeable upon the public treasury.

Sec. 10. Be it further enacted, That if any trustee shall embezzle or convert to his own use or fail to pay over to his successor in office, or to others as may be directed by law, any of the proceeds or assets of any such bank or banks, or other corporation or corporations, or person or persons, pretending to exercise corporate powers, shall, upon indictment and conviction thereof, in addition to the payment of his bond, be imprisoned in the penitentiary not less than two years, nor more than ten years, for each and every offence.

Sec. 11. Be it further enacted, That the foregoing section of this act shall not, nor any part thereof, be so construed as to release any person or persons interested in, or any way connected with, any such bank or banks, corporation or corporations, or person or persons, pretending to

exercise corporate powers, from his individual liabilities for any fraud or mismanagement of the same.

Sec. 12. And be it further enacted, That this act shall take effect and be in force from and after its passage.

ROBERT W. ROBERTS.
Speaker of the House of Representatives.
ARTHUR FOX,
President of the Senate.

Approved 26th July, 1843.

T. M. TUCKER.

I, Wilson Hemingway, secretary of state of the State of Mississippi, do hereby certify the annexed extracts from Howard and Hutchinson's Digest of the Statutes of the State of Mississippi, namely, page 610, section 4, act of 1837; page 343, section 3, passed June 13th, 1822; and page 468, sections 10 and 12, act of 1833, to be correctly copied from said digest; and that I have compared said extracts with the original laws on file in my office; also, that the annexed copy of "an act to prescribe the mode of proceeding against incorporated banks, for a violation of their corporate franchises, and against persons pretending to exercise corporate franchises under acts of incorporation, and for other purposes, approved the 26th July, 1843," the same having been by me compared with the original act, and are strictly correct.

In testimony whereof I have hereunto affixed the great seal of the State; given under my hand this 27th August, A. D. 1844.

[L. S.]

WILSON HEMINGWAY,
Secretary of State.

Extract "C."—Page 375, sect. 16.

Sect. 16. The rate of eight dollars for the forbearance or giving day of payment of one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time, may be taken, allowed, and recovered, on all contracts, bonds, and notes, in writing, signed by the debtor, orders, bills of exchange, and accounts stated, which ascertain the sum due, after the same is due and payable; and on all judgments and decrees, founded on contracts, debts, or demands, bearing interest, the rate of interest shall be the same as that allowed by law on the contract, debt, or demand, on which such judgment or decree shall be founded; and on judgments and decrees in all other cases, the rate of interest shall be eight per cent. per annum.

Extract "N."—Page 344, sec. 5.

Sec. 5. Every conveyance, covenant, agreement, and other deed in this act mentioned, except deeds of trust and mortgages, which shall be acknowledged, proved, and certified according to law, and delivered to the clerk of the proper county, to be recorded within three months after the sealing and delivery thereof, shall take effect and be valid as to all persons, from the time of such sealing and delivery; but all deeds of

trust or mortgages, whensoever they shall be delivered to the clerk to be recorded, and all other conveyances, covenants, agreements, and deeds, which shall not be acknowledged, proved or certified, and delivered to the clerk of the proper court, to be recorded within three months after the sealing and delivery thereof, shall take effect and be valid as to all subsequent purchasers for valuable consideration without notice, and as to all creditors, from the time when such deed of trust or mortgage, or such other conveyance, covenant, agreement, or deed shall have been so acknowledged, proved or certified, and delivered to the clerk of the proper court to be recorded, and from that time only: Provided, however, That if two or more deeds embracing the same property, after having been so acknowledged, proved or certified, be delivered to the clerk to be recorded on the same day, that which was first sealed and delivered shall have preference by law.

(Mem. by the clerk of the supreme court. The above extracts marked "C" and "N," are copied from a book entitled "The Statutes of the State of Mississippi," &c., compiled by V. E. Howard and A. Hutchinson; to which book is appended the following certificate:)

SECRETARY OF STATE'S OFFICE,
Jackson, Mississippi.

I, Wilson Hemingway, secretary of state of the State of Mississippi, do hereby certify, that the annexed volume, the Statutes of the State of Mississippi, compiled by V. E. Howard and A. Hutchinson, by authority, contains true and faithful copies of the original laws of said State, deposited in my office.

And in authentication of the same, I have hereunto affixed the great seal of the State, this the first day of June, in the year of our [L. L.] Lord one thousand eight hundred and forty-two.

WILSON HEMINGWAY,
Secretary of State.

Deed of trust and assignment.

"H."

Whereas on the tenth of February, in the year of our Lord eighteen hundred and forty-two, the President and Directors of the Grand Gulf Railroad and Banking Company executed a deed of trust and assignment of all its property and effects to John Lindsay and Alfred Ingraham, which deed of trust was made to secure and pay the debts due by the said President and Directors of the Grand Gulf Railroad and Banking Company, and is in the words and figures following, to wit:

This indenture, made the tenth day of February, in the year of our Lord one thousand eight hundred and forty-two, by and between the President and Directors of the Grand Gulf Railroad and Banking Company, of the one part, and John Lindsay and Alfred Ingraham, of the county of Claiborne, and State of Mississippi, of the other part.

Whereas the party of the first part are indebted to sundry persons and bodies corporate in divers sums of money, which from various causes the said party of the first part are unable at present fully to pay

...are desirous of providing an adequate security for the payment and satisfaction of the same in a just and equitable manner:

Now, this indenture witnesseth, that the said party of the first part, as well for the consideration aforesaid, as for and in consideration of the sum of one dollar to them in hand paid by the party of the second part, at and before the sealing and delivery of these presents, the receipt whereof they do hereby acknowledge, have granted, bargained, sold, aliened, enfeoffed, released, confirmed, assigned, delivered, transferred, and set over, and by these presents do grant, bargain, sell, alien, enfeoff, release, confirm, assign, deliver, transfer, and set over, unto the said party of the second part, all and singular the lands, tenements, hereditaments, stocks, goods, chattels, rights, credits, moneys, property, and effects of the said party of the first part, whatsoever and wheresoever, saving and excepting only the estate, property, and effects contained, described, and set forth in a certain schedule hereunto annexed, sealed with the seal of the said party of the first part, and bearing even date herewith.

To have and to hold all and singular the premises hereby given, granted, assigned, and transferred, or intended so to be, to the said party of the second part, and to the survivor of them, and the heirs, executors, administrators, and assigns of such survivor, to and for their and his own use, benefit, and behoof forever, as joint tenants and not as tenants in common.

In trust, nevertheless, to and for the following uses, intents, purposes, and trusts, and to and for none other whatsoever, that is to say, in trust, in the first place, to enter upon the real estate hereby granted, and to sell, dispose of, and convey the same in fee simple, or for any less estate, by public or private sale, for the best price that can be obtained for the same for cash, or on credit, as to them may seem most expedient, and to give receipts for the purchase money, so that the purchaser or purchasers shall not be accountable for the same; and in the mean time, and until sales shall be made to receive the rents, issues, and income of the said real estate, and pay the charges thereon, and to sell, dispose of, assign, and transfer all the personal estate, property, and effects hereby assigned, transferred, and set over by the party of the first part to the party of the second part, for the best price that can be obtained for the same for cash, or on credit, as to them shall seem most expedient, and to receive in payment of the same, and in payment of the real estate, so as aforesaid sold and conveyed, the notes and other evidences of debt of the party of the first part, if the said party of the second part shall deem it expedient so to do; and in the next place in trust to ask, demand, sue for, recover, receive, collect, and get in all and singular the debts and moneys due and owing to the party of the first part, and hereby assigned, and at their discretion to compromise and compound for the same, and in payment of the same to take that or personal estate, and to receive the notes and other evidences of debt of the party of the first part; and the moneys so collected, received, and got in, as well as the proceeds of the said real and personal estate, safely to keep and apply to and for the uses and purposes

herein declared: that is to say, in the first place, to pay and discharge all reasonable and necessary expenses, costs, and charges attending the execution of this trust, in which it is expressly understood and agreed that there shall be included to be charged by, and allowed to, the said John Lindsay, five thousand dollars per annum, and the said Alfred Ingraham, the sum of four thousand dollars per annum, respectively, so long as they shall respectively devote their time and attention to the business and concerns of this trust, so far as the same shall be required: Provided, always, that if, at any time hereafter, any creditor or creditors of the said party of the first part, interested in this suit to the amount together of two hundred and fifty thousand dollars or more, shall require the parties of the second part to call a meeting of all the creditors so interested, for the purpose of diminishing, enlarging, or revoking such allowances to the assignees above mentioned, or any of them, that it shall then be the duty of the said party of the second part to call such meeting, to be held at some convenient place to be by them appointed, of which sixty days notice shall be published in one or more papers of the county of Claiborne and State of Mississippi, and of the cities of New York, Philadelphia, and New Orleans, at least eight times during the said period of sixty days and at such meeting a majority in number and value of all said creditors shall then and there have power to diminish, increase, or revoke the said allowance accordingly; and in case of such diminution or revocation, then the trust of this indenture, in regard to such allowance, shall thereafter conform to such order of the creditors aforesaid; saving, nevertheless, in that event, to the parties of the second part, and each of them, their right to such compensation as a competent tribunal shall in this behalf hold them to be respectively entitled to for their services in the execution of this trust. And, in the second place, to pay off, discharge, and satisfy all the judgments heretofore entered and obtained against the said party of the first part, in any court, or before any magistrate in the State of Mississippi, together with the interest, costs, and charges accruing thereon. And, in the third place, fully to indemnify and save harmless all sureties from any loss or damage which they, or any of them, have sustained or may sustain, for or by reason of any suretyship, engagement, or responsibility of any kind whatsoever, which they respectively have entered into for or on behalf of the said party of the first part to these presents. And, in the fourth place, from time to time, as often as they shall have moneys in hand of sufficient amount for a dividend, to divide and distribute the same rateably and equally in and towards the payment of all and every the debts of the said party of the first part, and the interests accrued thereon, so that each creditor may participate rateably and alike in every such dividend, until all the said debts and the interest accrued thereon, shall be fully paid off and discharged. And in further trust from and after the payment and discharge of the debts intended to be secured and provided for by this indenture in full with interest; then to retransfer, convey, and pay over to the said party of the first part, their successors and assigns, whatever may remain of the premises hereby granted or assigned, and all moneys, credits, and effects which

... raised therefrom, or from any part thereof, and not applied to the purposes of the trusts herein and hereby created, together with all deeds, papers, muniments of title, evidences, and securities, relating thereto: Provided always, nevertheless, and it is hereby expressly declared, understood, and agreed, as the condition of this indenture, and the trusts therein and thereby created, that before the said trustees, their successors or assigns, shall proceed to make or declare any dividend of the moneys raised or collected as aforesaid, they shall give sixty days notice of their intention so to do, in one or more newspapers published in the cities of New York, Philadelphia, and New Orleans, and in the county of Claiborne, at least eight times during the said period of sixty days, calling upon the claimants to come forward and prove their debts; and such dividend shall be declared and made only on the amounts so brought forward and proved; and no creditor shall be entitled to claim or receive such dividend who shall not have brought forward and proved his, her, or their debt or debts before the time appointed for making and declaring such dividends. But, if any further dividends shall thereafter be made, such neglecting or defaulting creditors bringing forward and proving his, her, or their claim or claims in time therefor as aforesaid, shall be entitled to receive, in addition to such dividend, an amount equal to the rate of dividend or dividends which shall have been before made and paid, and so on from time to time, until a final dividend shall be declared and made, which final dividend, the said trustees, their successors and assigns, are hereby authorized and required to declare and make, whenever the moneys arising from the premises hereby granted and assigned shall, by the payment of the said final dividend, be disposed of and exhausted; or when all the creditors who have brought forward and proved their claims, shall be paid in full, principal and interest; it being understood, however, that no interest shall be paid until the final dividend, and from and after such final dividend, no creditor shall have any claim upon the remaining fund, if any there be, nor upon the said trustees, their successors or assigns, for or by reason of these presents, or the terms herein or hereby created, but the same, except the trust for reconveying the surplus to the said party of the first part, their successors or assigns, shall thenceforth cease, determine, and be at an end: Provided, also, and it is expressly understood and agreed, that if the said party of the first part, their successors or assigns, shall at any time pay off and discharge the said debts, then and from thenceforth the trusts herein and hereby created, or so much thereof as shall remain unexecuted, shall cease and be determined, and the whole of the trust property then remaining shall be conveyed, transferred, and be delivered to the said party of the first part, their successors or assigns; and it is hereby expressly agreed, by and between the parties to these presents, as a condition and part thereof, that the said trustees, their successors and assign, shall not be answerable for the acts, omissions, or defaults of each other, but only each for his own acts, omissions, or defaults of any agent or agents they may find it necessary to employ; but that they shall be accountable only for the exercise of fair and reasonable skill and judgment as

well in the appointment of such agent or agents as in the [illegible] agement of the trust hereby created, if the same be executed in good faith and intention. And the better to enable the party of the second part, their successors and assigns, to executed the said trusts, the said party of the first part do hereby make, constitute, and appoint them their true and lawful attorneys and attorney irrevocable in the premises, for them and in their name, or otherwise, but to and for the uses, intents, and purposes of this trust, and at the cost and charges of the same, to ask, demand, sue for, and recover, and receive all and every sum or sums of money, due or to become due, by reason of any matter or thing herein and hereby granted and assigned, or intended so to be, and to give receipts and acquittances for the same, and generally to act and do as fully and effectually in the premises as they themselves might or could do, and substitute or substitutes, one or more under them, to nominate and appoint, and again at pleasure to revoke such nominations or appointments, hereby ratifying and confirming whatsoever they or their said substitute or substitutes may lawfully do in the premises.

In witness whereof the said parties have hereunto interchangeably set their hands and seals, the said the President and Directors of the Grand Gulf Railroad and Banking Company, of the first part, acting for their president John Lindsey, at Grand Gulf, the day and year first above written.

The words "the" in the fourth line from the top of the second page, "to take real or personal estate and" in the twentieth line from the top of the second page, the word "one" in the fifth line from the bottom of the fourth page, and the words "or otherwise" in the third line from the bottom of the fifth page, were interlined before execution.

J. LINDSEY, [SEAL.]
President.

We accept the trusts created by the above indenture of assignment, this twenty-fifth day of February, in the year of our Lord one thousand eight hundred and forty-two.

JOHN LINDSEY, [SEAL.]
ALFRED INGRAHAM. [SEAL.]

STATE OF MISSISSIPPI,
Claiborne county.

Before me, the subscriber, a judge of the probate court of the county aforesaid, appeared the above named John Lindsey, esquire, to me personally known as the president of the corporation above named, "the President and Directors of the Grand Gulf Railroad and Banking Company," who, being duly sworn, according to law, did depose and say, that he executed the above written indenture as president of the said corporation, and that the above impression is the common seal of the said corporation thereto duly affixed by the authority of the board of directors, and the said indenture is sealed and delivered as the proper act and deed of the said "the President and Directors of the Grand

and Banking Company, for the uses, intents, and purposes herein set forth.

Given under my hand and seal this 25th day of February, A. D. 1842.

WM. M. RANDOLPH, [SEAL.]
Judge of Probate C. C.

Schedule of the estate, property, and effects, excepted and reserved in the foregoing indenture of assignment annexed thereto, and sealed with the common seal of the President and Directors of the Grand Gulf Railroad and Banking Company, at Grand Gulf, on the 10th day of February, 1842, by authority of the said President and Directors, viz:

A note executed by D. B. Batterson, R. J. Bland, J. Harper, dated Grand Gulf, December 6th, 1837, payable to the President and Directors of the Grand Gulf Railroad and Banking Company, four months after the date thereof, for - - - - $1,500 00
Entitled to a credit, July 15th, 1838, of - - - - 1,139 52
A note executed by Benjamin F. Stockton, Harper, Carpenter & Co., in liquidation, A. Tunstall & Co., in liquidation, L. P. Maxwell, dated Grand Gulf, 21 March, 1839, payable to the President and Directors of the Grand Gulf Railroad and Banking Company, on 15th November, 1839, for - - - - - - 1,060 00
A note executed by A. Tunstall, J. Harper, Summers & Watt, dated Grand Gulf, 19th December, 1836, payable to the President and Directors of the Grand Gulf Railroad and Banking Company, thirteen months after the 23d of December, 1836, for - - - - - - 1,500 00
A note executed by A. Tunstall & Co., in liquidation, Harper, Carpenter & Co., Summers & Watt, dated Grand Gulf, 24th December, 1837, payable to the President and Directors of the Grand Gulf Railroad and Banking Company, thirty days after the 30th December, 1837, for - - - - - - - - 600 00

A note executed by Eli West for $718\frac{76}{100}$, dated Port Gibson, September 24th, 1838, payable on the 1st of March, 1839, to J. O. Pierson & Co., or order, and endorsed by J. O. Pierson & Co., and by Muir, Moore & Co., negotiable and payable at the Bank of Port Gibson, and protested for non-payment at maturity.

A bill of exchange drawn by Brock & Jones, on Davis, Wood & McCall, Vicksburg, Mississippi, for $1,000, dated at Grand Gulf, January 11th, 1837, payable thirty days after date to the order of Sawyer & Wilroy, and endorsed by them and A. Tunstall & Co., and protested for non-payment at maturity.

A bill of exchange drawn by Wm. M. Bunn, on Bogart & Hoopes, of New Orleans, and by them accepted on the 20th November, 1835, for $1,525, dated Port Gibson, 13th November, 1835, payable four months after sight to the order of James H. Moore & Co., and en-

dorsed by them and Robert G. Green, and protested for [illegible] at maturity.

JOHN LINDSEY, [SEAL.]
President.

STATE OF MISSISSIPPI, *county of Claiborne.*

I, Fredrick J. Poor, clerk of the probate court in and for said county, do hereby certify, that the within and foregoing deed of assignment was filed in my office for record, on the 25th day of February, A. D. 1842, and that the same is now duly recorded in my office in book W, pages 20, 21, 22, 23, 24.

Given under my hand and official seal, at Port Gibson, this 6th day [L. S.] of April, A. D. 1842.

FREDRICK J. POOR, *Clerk*;
By H. CARPENTER, *D. C.*

And whereas, the said John Lindsey and Alfred Ingraham accepted the trusts of said deed, took into their possession and control the property and effects, and entered upon the execution of the trusts thereof; and whereas, since the execution of the said deed of trust, and the acceptance thereof by said John Lindsey and Alfred Ingraham, the said John Lindsey has departed this life; and whereas, the duties necessary to a proper fulfilment and discharge of the said trusts are extremely onerous, and it is utterly impossible for the said trusts to be effectually carried into execution, and the interest of the creditors of the said President and Directors of the Grand Gulf Railroad and Banking Company, to be properly protected without the appointment of an additional trustee, the amount of business involved, and the proper execution of said trusts, require that another trustee should be appointed in the place of said John Lindsey, deceased; it has therefore [been] deemed proper and advisable by the said President and Directors of the Grand Gulf Railroad and Banking Company, the said Alfred Ingraham, and by various creditors of the said President and Directors of the Grand Gulf Railroad and Banking Company, that George Read, of the county of Claiborne, and State of Mississippi, should be associated as a co-trustee with the said Alfred Ingraham, for the accomplishment and due execution of the foregoing deed of trust. And whereas, the said George Read has agreed to be associated, and to act with the said Alfred Ingraham as co-trustee as aforesaid, in the place of said John Lindsey, deceased, subject to the same duties and responsibilities, and to receive the same remuneration that the said John Lindsey received as trustee as aforesaid; therefore, to accomplish these purposes, and to more effectually carry into effect the provisions and trusts in the foregoing deed of assignment mentioned, this indenture witnesseth: that the said President and Directors of the Grand Gulf Railroad and Banking Company, and the said Alfred Ingraham, for the consideration aforesaid, and for the further consideration of five dollars, to them in hand paid by the said George Read, receipt of which is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, confirmed, assigned, delivered, transferred, and set over, and by these presents do

grant, bargain, sell, alien, enfeoff, release, confirm, assign, deliver, transfer, and set over, unto the said Alfred Ingraham, *an* to the said George Read, and to the survivor of them, and to the heirs, executors, administrators, and assigns of such survivor, all and singular the lands, tenements, hereditaments, stocks, goods, chattels, rights, credits, moneys, property, and effects, in the aforesaid deed of trust, made by the said president and directors to the said John Lindsey and Alfred Ingraham, mentioned, and contained, and described, saving and excepting only, the estate, property, and effects, contained, described, and set forth, in a certain schedule annexed to the aforesaid deed of trust and assignment, sealed with the seal of the said president and directors, and bearing even date with said deed of trust and assignment, all of which property, real and personal, effects, notes, &c., hereby assigned and conveyed to the said Alfred Ingraham and George Read, a schedule will be made out as soon as the same can conveniently and reasonably be done, and be annexed hereto; to have and to hold all and singular the said property, real and personal, debts, choses in action and effects, to them, the said Alfred Ingraham and George Read, and to the survivor of them, and to the heirs, executors, administrators, and assigns of such survivor, upon the same trusts and uses named, specified, and declared in said deed of trust so executed as aforesaid to the said John Lindsey and Alfred Ingraham, and the said trustees; to have the same powers and to be subject to the same responsibilities that the said trustees Lindsey and Ingraham were subjected to in and by the aforesaid deed. And whereas the clause in said original deed, made to said Lindsey and Ingraham, giving power to said trustees to compromise and compound claims and debts due to the said president and directors, and to receive real and personal estate in payment thereof, was only intended to embrace cases wherein the parties who owed the debts were in doubtful or desperate circumstances, or where the debt or demand was legally disputable, and a recovery of the same was doubtful; therefore, to explain clearly the intention of said parties, it is hereby declared that said powers to compromise and compound, and to receive real and personal estate, shall only extend to cases of the said doubtful or disputable character.

In testimony whereof the said President and Directors of the Grand Gulf Railroad and Banking Company, have hereunto affixed [L. S.] the common seal of them, the said President and Directors of the Grand Gulf Railroad and Banking Company, and the said Alfred Ingraham hath hereunto set his hand and affixed his seal, on this the thirty-first day of December, in the year of our Lord eighteen hundred and forty-two.

ALFRED INGRAHAM. [SEAL.]

We saw the seal of the President and Directors of the Grand Gulf Railroad and Banking Company affixed to this deed of assignment on the day and year above named, to wit, the thirty-first day of December, in the year of our Lord eighteen hundred and forty-two, in presence of the Board of Directors of said bank and by their order and direction.

And we saw Alfred Ingraham sign, seal, and acknowledge the same; and we saw said deed delivered on the said day to Alfred Ingraham and George Read, the trustees named therein.

GEO. L. VAN BIBBER,
A. VAN BIBBER.

We accept the office of assignees as within set forth. Witness our hands and seals, this thirty-first day of December, eighteen hundred and forty-two.

ALFRED INGRAHAM, [SEAL.]
GEO. READ. [SEAL.]

Witnesses:
GEO. L. VAN BIBBER,
A. VAN BIBBER.

STATE OF MISSISSIPPI, *Claiborne county.*

Personally appeared before me, William M. Randolph, judge of the probate court of the county aforesaid, the above Geo. L. Van Bibber and A. Van Bibber, subscribing witnesses to the above and foregoing deed of trust and assignment, who being first duly sworn, depose and say, that they saw the common seal of the President and Directors of the Grand Gulf Railroad and Banking Company affixed to said deed of trust and assignment, on the day it bears date, as the act and deed, of the said President and Directors of the Grand Gulf Railroad and Banking Company, in the presence of, and by the direction of, the Board of Directors of said institution; and that they saw the said deed, after it was sealed as aforesaid, delivered to Alfred Ingraham and George Read, the assignees therein named, as the act and deed of the said the President and Directors of the Grand Gulf Railroad and Banking Company, and that they subscribed as witnesses to the same, at the request of said Board of Directors, in the presence of each other and in the presence of the Board of Directors, on the day and year therein named; said witnesses also depose that they saw Alfred Ingraham sign, seal, and deliver the said deed of trust and assignment as his act and deed

Witnesses also depose that they saw Alfred Ingraham and George Read sign their names and affix their seals to that part of said deed, showing the acceptance of the trusts thereof.

Given under my hand and seal, this thirty-first day of December, in the year of our Lord eighteen hundred and forty-two.

WM. M. RANDOLPH. [SEAL.]

Filed for record, 31st December, 1842, and truly recorded.

FRED'K J. POOR, *Cl'k.*

THE STATE OF MISSISSIPPI,
County of Claiborne, ss.

I, Frederick J. Poor, clerk of the probate court in and for said county, do hereby certify, that the foregoing transcript, of nine pages, con-

a true copy of a deed of trust or assignment, from the President and Directors of the Grand Gulf Railroad and Banking Company and Alfred Ingraham, to Alfred Ingraham and George Read, as the same appears of record in my office, in book W, pages 233, 234, 235, 236, 237, and 238.

Given under my hand and seal of office, at Port Gibson, this 8th day of December, A. D. 1843.

[SEAL.]

FRED'K J. POOR, *Cl'k.*
By JNO. W. MURPHY, *D. C.*

STATE OF MISSISSIPPI,
County of Claiborne.

I, William M. Randolph, judge of the probate court of the county of Claiborne, in the State of Mississippi, do certify, that the foregoing certificate of Frederick J. Poor, and the attestation thereto, are in due form of law, and that said Poor is, and was on the day of the date thereof, clerk of said court, duly qualified and acting as such.

Given under my hand and seal, this 14th day of December, A. D. 1843.

WM. M. RANDOLPH, *Judge, &c.* [SEAL.]

THE STATE OF MISSISSIPPI,
County of Claiborne, ss.

I, Frederick J. Poor, clerk of the probate court in and for the county and State aforesaid, do hereby certify, that William M. Randolph, whose name is subscribed to the certificate above written, is, and was at the time of his subscribing the same, judge of the probate court in and for the county of Claiborne and State of Mississippi aforesaid, duly commissioned and qualified according to law, and that full faith and credit are due, and ought of right to be given, to all his official acts as such.

Given under my hand and the seal of said probate court, hereunto affixed, at Port Gibson, this 14th day of December, A. D. 1843.

[SEAL.]

FRED'K J. POOR, *Cl'k.*

"P."

An act requiring the several banks of this State to pay specie, and for other purposes.

Section 1. Be it enacted by the legislature of the State of Mississippi, That it shall not be lawful for any bank in this State to issue for, and keep in circulation at any one time, more than three times the amount of its specie capital.

Sect. 2. Be it further enacted, That from and after the passage of this act, it shall not be lawful for any bank in this State to issue any bank note, bill of exchange, or other evidence of debt, for circulation, before and until the present circulation of such bank be reduced to an amount not exceeding three times the amount of specie actually in the

vaults thereof, and bona fide belonging thereto, as the [illegible] tal, nor shall any bank issue any notes or bills for circulation, at any time, to an amount exceeding such proportion of its specie basis at the time of issuing the same; nor shall any notes or bills for circulation at any time when the specie in the vaults of such bank shall be less than one-third of its circulation.

Sect. 3. Be it further enacted, That it shall be the duty of the president and directors of each bank in this State, twice a year, to make out a statement, under oath, to be administered by any civil officer, legally authorized to administer oaths, showing the amount of specie at that time remaining in such bank as the basis of its circulation; which statement so made shall be filed in the clerk's office of the circuit court of the county in which the bank may be located; and the clerk of said court shall record the same in a well bound book, to be kept for that purpose, and shall receive, as his compensation therefor, the sum of fifty cents, payable out of the State treasury, upon the certificate of the judge assigned to the district.

Sect. 4. Be it further enacted, That it shall not be lawful for any bank in this State to issue any post note, or note, bill, or other evidence of debt, payable at a day subsequent to its date, under any device or pretext whatever; nor to pay from the counter thereof any such post note, note, bill, or other evidence of debt, in payment of any debt due by such bank.

Sect. 5. Be it further enacted, That it shall not be lawful for any bank in this State to deal in stocks of any kind; to purchase and hold, either in trust, by mortgage or otherwise, any personal or real estate, except such alone, or so much as may be necessary for the proper conducting of the immediate affairs thereof; and at no time to exceed in value the sum of one hundred thousand dollars: Provided, That this section does not apply to the estate owned by any bank in any railroad constructed, or to be constructed, by the provisions of its charter; and provided, also, that such prohibition shall not prevent any bank from taking mortgages or other liens upon lands or other property, to secure debts already existing.

Sect. 6. Be it further enacted, That it shall not be lawful for any bank in this State to deal in cotton or other commodity as security, or collateral security, for the payment of any loan or loans made by such bank, or to purchase, as an article of trade, any cotton or other commodity; and any contract or contracts, of whatever kind, made in relation to such commodities, shall be absolutely null and void.

Sect. 7. Be it further enacted, That it shall not be lawful for any bank in this State, to transfer, by endorsement or otherwise, any note, bill receivable, or other evidence of debt; and if it shall appear in evidence upon the trial of any action upon any such note, bill receivable, or other evidence of debt, that the same was so transferred, the same shall abate upon the plea of the defendant.

Sect. 8. Be it further enacted, That from and after the first day of April next, all the banks, and moneyed corporations in this State, shall be required to pay specie at their counters respectively, for all their

then due of the denomination of five dollars and under; and that from and after the first day of July next, they shall be required to pay specie on all their notes and liabilities of the denomination of ten dollars and under; and that from and after the first day of October next, they shall be required to pay specie on all their notes and liabilities of the denomination of twenty dollars and under; and that from and after the first day of January, 1841, they shall be required to resume specie payments upon all their notes, bills, bonds, and other liabilities, of whatever denomination, then due.

Sec. 9. Be it further enacted, That should any bank or moneyed corporation in this State, from and after the times prescribed in the preceding section of this act, refuse to pay specie on its respective liabilities, as therein specified, and in the manner therein prescribed, it shall be the duty of the president, cashier, or teller of such bank, to place his name, together with the date, on the back of such note or evidence of liability, on presentation thereof; which said endorsement shall be held and deemed sufficient evidence of protest and refusal of the bank to pay specie; and should the president, cashier, or teller, refuse so to endorse the same, he shall be liable to indictment, and on conviction thereof shall be fined one thousand dollars, and imprisonment three months.

Sec. 10. Be it further enacted, That whenever the governor, either from the certificate of the president, cashier, or teller, as aforesaid, or by the affidavit of the holder of any such note, bill, or other evidence of debt, shall be satisfied that such presentment has been duly made, and payment refused, he shall forthwith issue his proclamation, declaring that said corporation has forfeited all its banking powers and privileges; a copy of which proclamation he shall forward to said corporation; after which, such corporation shall retain and use its corporate name for the purpose of winding up and liquidating its affairs, and for no other purpose whatever.

Sec. 11. Be it further enacted, That whenever any such bank or other corporation shall have been adjudged and proclaimed by the governor, as aforesaid, to have forfeited its corporate franchise, the president and directors of each bank or corporation, or, in default thereof, the stockholders, shall proceed immediately to appoint one disinterested commissioner; and it shall be the duty of the governor, on being informed thereof, also to appoint one disinterested commissioner, which said commissioner shall proceed, under oath, to make out a schedule of all the goods and effects, rights and interests, of such corporation, and also of all her liabilities, of whatever description; to effect which, the said commissioners shall examine all the officers of said corporation on oath, which oath shall be administered by any person authorized by law to administer oaths, touching the same; one copy of which schedule shall be forwarded to the governor, duly certified by said commissioners, and shall remain in his office for the inspection of all persons concerned; and one copy of which shall remain in said bank.

Sec. 12. And be it further enacted, That hereafter it shall not be lawful for any individual or firm to become indebted to any bank in

this State in a greater sum than twenty thousand dollars over [illegible] own individual liability, nor as endorser on a larger sum than [illegible] thousand dollars: Provided, that nothing in this section shall prevent the renewal of any debt heretofore contracted, and now due any bank in this State, in a larger amount.

Sec. 13. Be it further enacted, That in the liquidation of the affairs of any bank or corporation under the provisions of this act, no dividend shall be allowed or paid out of the same, until all its other liabilities shall have been first discharged; and in any such case, if it shall appear that any persons charged with the liquidation of the affairs of such bank or corporation, have concealed, embezzled, or fraudulently squandered any interest, property, or effects of the same, or shall knowingly permit any other person to do the same, or, knowing the same, shall fail to give information thereof to the governor, whether the thing so concealed or embezzled be contained in the schedule lodged with the governor or not, shall be subject to indictment for the same, and be on conviction fined in a sum not exceeding one thousand dollars. And, hereafter, no one who shall be a director of any bank within the State, shall, at the same time, be elegible for, or act as the collecting attorney of said bank, or any other bank.

Sec. 14. Be it further enacted, That hereafter no individual shall have a loan by the discounting of a note, bill, or otherwise, in any bank of which he is director, officer or clerk, nor shall he procure any one to draw or endorse any note or bill to be discounted for his use or accommodation; but the said banks may give compensation to their officers and directors for their services, and that the directors of all the banks of this State shall be made liable in their persons and property for any wilful violation of any of the provisions of their respective charters; and before entering on the duties of a director, shall be required to take an oath, faithfully, and to the best of his understanding, observe inviolably, the provisions of the charter of the bank whereof he is about to become a director, under the provisions of this act.

Sec. 15. Be it further enacted, That it shall be, and is hereby made, the duty of the governor, in all cases where satisfactory evidence shall be received by him, that any bank is acting in fraud, for the purpose of anticipating or avoiding in any way the effects of a forfeiture of charter, to instruct the attorney general forthwith to institute proceedings against such bank, and to enjoin the same according to the provisions of the law in force and use in other cases.

Sec. 16. Be it further enacted, That it shall be at the option of any bank of this State, within one hundred and twenty days after the passage of this act, to surrender its charter; and that the directors or managers of any bank are hereby authorized to call a general meeting of its stockholders to decide thereon; and if they shall determine to surrender their charter, it shall be the duty of such bank, within the time specified, to deposite in the office of the secretary of state, a certificate of such surrender, under the corporate seal of said bank; but such surrendering bank shall retain, so long as may be necessary to effect and complete the liquidation of their affairs, not exceeding eight years, all

of its charter which may be necessary for that purpose, and further: Provided, however, that it shall be lawful for such bank to use and to hold its corporate name for the purpose of prosecuting or defending any suit, either at law or in equity, that may have been instituted before the expiration of its charter.

Sec. 17. Be it further enacted, That any bank which shall have surrendered its charter in the manner prescribed in the preceding section, shall extend indulgence to its debtors, upon their giving good security to the bank, by renewing annually for one, two, three, four, five, and six years, the debtor paying at each renewal one-sixth of the debt, and the discount upon the remainder; and that in all cases where time is extended to the debtor, the bank shall have power to take mortgages, and any other security which may be satisfactory.

Sec 18. Be it further enacted, That within thirty days after the deposite of certificate of surrender in the office of the secretary of State, by any bank, and annually thereafter, in the month of January, it shall be the duty of the governor to appoint a commissioner, a citizen of the county where said bank is situated, who shall, together with the cashier of the bank, or other person appointed by the directors for that purpose, proceed without delay to take an inventory in duplicate of all the assets and property of whatever kind belonging to said bank, and also to make a statement in duplicate of all its liabilities of whatever nature; and that they may be enabled to perform this duty, the said commissioner shall have power to examine, on oath, the directory and officers of said institution, or any other person, to send for persons and papers, and to compel the attendance of witnesses; and that said duplicate, inventory, and statement, shall be verified by the oath of said commissioner and cashier, or other person appointed by the directors, and one copy thereof left in possession of the bank, and the other transmitted to the office of the secretary of State by said commissioner.

Sec. 19. Be it further enacted, That such inventories and statements as are provided to be made in the preceding sections, or any of them, or any portion thereof, shall be published by the bank in some newspaper, on application from, or direction thereto, by the governor; and that the commissioner provided to be appointed in the preceding section, shall be entitled to receive from the bank six dollars per diem, whilst actually engaged in the performance of his duty.

Approved, February 21, 1840.

An act supplementary to "an act entitled an act requiring the several banks of this State to pay specie, and for other purposes."

Sec. 1. Be it enacted by the legislature of the State of Mississippi, That the several banks of this State which have completed in the whole or in part any railroad or work of internal improvement, shall only forfeit or surrender their banking privileges in the contingency provided in said act; but their charters shall, notwithstanding such forfeiture or surrender, remain in force so far as regards such railroad or work of internal improvement which may be constructed, completed, and used, according to said charters respectively.

Sec. 2. Be it further enacted, That all banks above [illegible] all other banks of this State, shall at all times receive their respective notes at par in the liquidation of their bills receivable, and other claims due them.

Sec. 3. And be it further enacted, That this act shall take effect and be in force from and after its passage.

Approved, February 22, 1840.

Proceedings in the supreme court—Answer of appellee.

JOHN R. MARSHALL
vs.
GRAND GULF RAILROAD & BANKING CO.,
Ingraham & Reade, intervenors.

Supreme court, Alexandria, October term, 1844.

The appellee comes into court, by his counsel, and for answer to the appeal herein granted says, there is error in the judgment of the inferior court, and prays that it be amended, and that a final judgment be rendered in solido against Thomas G. Gordon, Thomas M. & E. D. Newell, garnishees, in the sum of $3,070 in par money, with 8 per cent. interest from the 31st January, 1840, till paid, and affirmed in all other respects with costs in both courts.

AMONETT, *Plaintiff's attorney.*

Filed 9th October, 1844.

ALPH. LASTRAPES, *Clerk.*

Answer of appellee.

JOHN R. MARSHALL
vs.
GRAND GULF RAILROAD & BANKING CO. et al. } 1207.

Supreme court, Alexandria, October term, 1844.

The appellee comes into court, by his counsel, and for answer to the appeal herein granted says, there is no error in the judgment of the inferior court, and prays that it be affirmed with costs, and ten per cent. damages for a frivolous appeal.

AMONETT & DUNLAP,
Plaintiff's attorneys.

Filed 10th October, 1844.

ALPH. LASTRAPES, *Clerk.*

Extracts from the minutes.

Thursday, 10th of October, 1844.

Court met pursuant to adjournment. Present, the honorable H. A. Bullard, A. Morphy, E. Simon, R. Garland.

1207, J. R. Marshall vs. Grand Gulf & R. R. Co. Set for trial on 21st instant.

Thursday, 31*st October*, 1844.

Court met pursuant to adjournment. Present, the honorable H. A. Bullard, A. Morphy, R. Garland.

1207, J. R. Marshall vs. Grand Gulf Railroad & Banking Co., continued.

Monday, October 6*th*, 1845.

Court met pursuant to law. Present, the honorable H. A. Bullard, Alonzo Morphy, Edward Simon.

1207, J. R. Marshall vs. Grand Gulf & R. R. Co. Fixed for trial on Saturday, the 11th.

Thursday, October 16*th*, 1845.

The court met pursuant to adjournment. Present, the honorable H. A. Bullard, A. Morphy, E. Simon.

1206, J. R. Marshall vs. Grand Gulf & R. R. Co. 1207, same vs. same. The argument in these two cases *were* commenced by Messrs. Snyder & Amonett for plaintiff.

Plea of prescription.

J. R. MARSHALL
vs.
GRAND GULF RAILROAD & BANKING CO., assignees of said bank, intervenors.

Supreme court, No. 1207.

The defendants and the intervenors plead the prescription of one year in support of the assignments made by the Grand Gulf Railroad & Banking Company to the intervenors.

DUNBAR, HYAMS & ELGEE, *Att'ys.*

Filed 17th October, 1845.

ALPH. LASTRAPES, *Clerk.*

Extracts from the minutes.

Friday, October 17*th*, 1845.

Court met pursuant to adjournment. Present, the Hon. H. A. Bullard, Hon. A. Morphy, Hon. E. Simon.

1206, J. R. Marshall vs. Grand Gulf & R. R. Co. The argument of this case was closed by Mr. Dunlap for the plaintiff.

Friday, October 24*th*, 1845.

Court met pursuant to adjournment. Present, the Hon. H. A. Bullard, Hon. A. Morphy, Hon. E. Simon.

1206, Marshall vs. Grand Gulf & R. R. Co. In this case the judgment of the district court is affirmed with costs.

1207, same vs. same. Same judgment.

Opinion and judgment.

JOHN R. MARSHALL
vs.
THE GRAND GULF RAILROAD AND BANKING COMPANY. } 1206.

Appeal from the district court of Madison. Bullard, J.

The plaintiff sues to recover $2,000, the amount of a number of bank notes issued by the defendants, an incorporated bank of the State of Mississippi. The suit commenced by attachment, but the defendants appeared by counsel, and answered by a general denial, and by averring that none of their property had been attached.

Thereupon Ingraham & Reed, residing in the State of Mississippi, intervened, and alleged in their petition that, by an act duly executed in that State, in the month of February, 1842, and by subsequent acts, the defendants conveyed and transferred to them, as assignees, for the use and benefit of all the creditors of said defendants, their whole property, including that attached in this case; all which, before the institution of this suit was delivered to them, as the plaintiff and the garnishees were well informed. They therefore oppose the plaintiff's demand, and claim the property attached.

The plaintiff answered the petition of intervention by denying, generally, the allegations therein, and then avers that, by the law of [the] State of Mississippi, where the bank was chartered and is located, all banks are by law prohibited from assigning any evidence of indebtedness; and he denies that the intervenors have, by virtue of the assignment made to them, any interest or title to or in the property in dispute in this suit. He avers that the assignment is illegal, void, and made in bad faith on the part of the bank, for the purpose of defrauding a portion of their creditors and of favoring others.

The deed of assignment purports to convey, transfer, set over, and assign to the intervenors all the property, rights, and credits whatever, belonging to the corporation, except certain notes and bills set forth in the schedule, amounting to about $4,400, which are reserved. The assignment is believed to be in the usual form, and for the uses and trusts set forth in the petition of intervention.

It is contended that this assignment is void, on two grounds: first, because by a statute of the State of Mississippi, passed in 1840, which we had occasion to consider in the case of Hyde and another vs. the Planters' Bank of Mississippi, decided in July, 1844, (8 Robinson,) and again, at the present term, in the case of Williams vs. the Planters' Bank of Mississippi and others, ante p. 125, the banks of that State are forbidden to transfer and assign their notes, bills, or other evidences of debt; and, secondly, because it gives illegal preferences and is in fraud of the rights of creditors. We shall consider the question only under the first aspect here presented, to wit, whether the act of 1840 prohibits a general assignment by a bank, so far at least as concerns its chose in action.

We are not aware that the courts of our sister and neighboring State have pronounced upon this question. We are therefore left without their aid, in deciding upon the extent to which the act alluded to takes away the rights of banking corporations, to make a general assignment. In order to come to a conclusion satisfactory to our own minds upon this point, it is proper to consider together the law of that State, appli-

[illegible] believed to all banking corporations, and which has been incorporated into the amendment of the charter of the bank now before us, that they shall at all times be obliged to redeem their notes in specie, and receive them in payment of all demands, and that which absolutely forbids them to assign and transfer their notes or other evidences of debts due to them, passed since the general discomfiture of those institutions. When viewed together, these positive provisions of law clearly indicate the policy of the State to be to modify, so far as it relates to banks, the general rule of law, that the assignee takes the debt or credit transferred, subject to any equity which existed previous to notice of such assignment. Those institutions had flooded the country with paper money, which they were no longer able to redeem; and, if permitted to transfer or assign their portfolios, so as to enable their assignee to recover and be paid in gold and silver, unless the debtor could show that he had the notes of the bank so assigning before notice, according to the general rule, it would have entailed great losses on the people, and at the same time have enabled the banks to pay their depositors, or other favored creditors, in preference to their circulation. The remedy would not have been co-extensive with the mischief, if, while the assignment of a particular chose in action was forbidden, it had been permitted to make a general assignment of all it possessed of that species of property. The right to make such general assignment, according to the law in Mississippi, as we understand it, implies the right on the part of the corporation, in common with other debtors in failing circumstances, to discriminate between different classes of creditors. Now, although, according to the tenor of this assignment, a fair distribution may have been contemplated, and provision made for receiving the notes of the bank in payment, yet, according to the pretensions of the bank, they had a right to make a general assignment like any other debtor. The statute forbidding the assignment goes further than we have found it necessary to go. It declares that the assignee cannot maintain any action on an assignment, but that it shall be sufficient ground for abatement. If the promissory note of A, transferred by the bank, would not become the property of the assignee, so as to enable him to maintain an action upon it, we cannot perceive how it would become valid by a simultaneous transfer of all the other choses in action, belonging to the assignor, and authorize such assignee to maintain an action upon it. The prohibition appears to us to apply to each and every chose in action, whether assigned separately or in mass; and while it leaves the bank the right to recover at law, in suits in their own names, it does not impair the right which each debtor of the banks has to pay at all times in the currency which they have respectively put in circulation as money.

The judgment of the district court was against the intervenors, and the plaintiff recovered the amount sued for, and the intervenors and the bank appealed. In this court the defendants and the intervenors pleaded the prescription of one year, in support of the assignment made by the Grand Gulf Railroad and Banking Company to the intervenors.

The prescription upon which the appellants rely is that which bars

the revocatory action after the lapse of one year. But, in this case before us, the assignees seek to avail themselves of the assignment by way of intervention, and therein become plaintiffs or actors; and the illegality or fraudulent character of the contract is set up by way of exception. It is precisely as if the intervenors had sued as assignees, and the defendant pleaded the nullity or fraud. Now, although the direct action might be prescribed and barred in one year, yet at whatever period the party seeks to enforce such a contract, the exception will avail him, against which it is sought to be enforced. Quæ temporalia sunt ad agendum, perpetua sunt ad excipiendum. Until the contract alleged to be fraudulent is sought to be enforced, the party affected has no interest in opposing it. We had occasion to consider this maxim, and its proper application, in the case of Delahoussay v. Dumartrait, 16 La., 91. It has been applied in numerous cases, where the vendors of slaves sue to recover the price, and the defence of redhibitory vices or defects has been permitted, long after the direct redhibitory action had been prescribed. The plea is, therefore, overruled.

It is further contended, by the counsel for the appellants, that the act of 1840, forbidding the transfer [of] choses in action, only gives to the debtor, when sued by the assignee, the right to cause the action to abate upon his plea, by showing in evidence upon the trial that the same was so transferred, and that the creditors of the bank have no right to set up such a ground of defence. But we are of opinion that the first clause of the act containing the prohibition is not controlled by the second, which indicates the plea which will avail the debtor when sued by the assignee for the recovery of the debt. If the credit did not pass by the assignment, a creditor who has levied an attachment upon it may well plead the illegality of the transfer by which his privilege is sought to be defeated.

The judgment of the district court is therefore affirmed with costs.

Judgment of the supreme court.

J. R. MARSHALL
vs. } 1207.
THE GRAND GULF RAILROAD AND BANKING CO.

Appeal from the district court, parish of Tensas, Bullard, J.

This case cannot be distinguished from the one just decided between the same parties.

It is therefore adjudged and decreed that the judgment of the district court be affirmed with costs.

Petition in error.

To the honorable the supreme court of the State of Louisiana.

The petition of Alfred Ingraham and George Reed, assignees of the Grand Gulf Railroad and Banking Company, and of the President and Directors of said company, a body corporate duly chartered by the State of Mississippi respectfully sheweth: That they are informed and verily

that there is error to their prejudice in the *in the* judgment of the said court, rendered on the 24th day of October, in the year 1845, affirming the judgment of the ninth judicial district court, sitting in and for the parish of Tensas, State of Louisiana, rendered by said district court on or about the 20th day of June, 1844, in the case No. 11, on the docket of said court, entitled John R. Marshall vs. the Grand Gulf Railroad and Banking Company, against your petitioners, Ingraham and Read, as intervenors therein, and against said company as defendants; and that in said suit there was drawn in question the validity of a certain statute of the State of Mississippi, on the ground of its being repugnant to the Constitution of the United States; and the final judgment of the said supreme court (being the highest court of the State of Louisiana in which a decision in the suit could be had) was in favor of the validity of said statute, and against the rights, title, privileges, and exemptions claimed by your petitioners respectively, as in and by the pleadings and record of the said case, in this honorable court remaining, will fully and at large appear.

Wherefore your petitioners pray that a writ of error from the judgment of this honorable court be allowed and granted, returnable to the Supreme Court of the United States, in terms of the Judiciary act of Congress of the 24th day of September, 1789, and more especially of the 25th section of said act; and your petitioners here tender their bond, with security, according to law.

H. H. STRAWBRIDGE,
Att'y for petitioners in error.

Order.

New Orleans, February 26, 1849. A writ of error is allowed, as prayed for, on the petitioners giving bond, with George Connelly as security, in the sum of one hundred dollars, conditioned as the law directs.

GEORGE EUSTIS,
Chief Justice supreme court.

Supreme court, Alexandria. Filed March 16, 1849.
M. H. ARIAIL, *Clk.*

Bond of assignees, plaintiffs in error.

Know all men by these presents, that we, Alfred Ingraham and George Head, assignees of the Grand Gulf Railroad and Banking Company, as principals, and George Connelly, as surety, are held and firmly bound unto John R. Marshall, in the sum of one hundred dollars; for the payment of which we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated at New Orleans, this fifth day of March, in the year of our Lord 1849.

Whereas Alfred Ingraham and George Read, assignees of the Grand Gulf Railroad and Banking Company, have sued out a writ of error to the Supreme Court of the United States to reverse a judgment ren-

dered by the Supreme Court of the State of Louisiana [illegible] John R. Marshall vs. the Grand Gulf Railroad and Banking Company, in which said company was defendant, and said assignees were intervenors; which judgment was rendered by the said supreme court of Louisiana on the 24th day of October, 1845, for the affirmance of a judgment in the ninth judicial district court, in and for the parish of Tensas of said State, against the said assignees and against said company, at the instance of the said John R. Marshall, for certain property attached by him as belonging to said company, but claimed by said assignees as to themselves appertaining, in which suit was involved the construction of an article or articles of the Constitution of the United States:

Now, therefore, the condition of the foregoing obligation is such, that if the above named Alfred Ingraham and George Read, assignees as aforesaid, shall prosecute their writ of error to effect, and shall answer all damages and costs, if they fail to make good their plea, then this obligation to be void; otherwise to remain in full force and virtue.

ALFRED INGRAHAM, [SEAL.]
Assignee.
GEORGE HEAD, [SEAL.]
Assignee.
By their att'y, H. H. STRAWBRIDGE.
GEORGE CONNELLY, [SEAL.]

Witness: J. M. CONNELLY.

Supreme court, Alexandria. Filed March 16, 1849.
M. H. ARIAIL, *Clk.*

Bond of the G'd Gulf R. R. & Bk'g Co., plaintiffs in error.

Know all men by these presents, that we, the Grand Gulf Railroad and Banking Company, as principals, and George Connelly, as surety, are held and firmly bound unto John R. Marshall, in the sum of one hundred dollars; for the payment of which we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at New Orleans the fifth day of March, in the year of our Lord 1849.

Whereas the Grand Gulf Railroad and Banking Company, by its president and directors, has sued out a writ of error to the Supreme Court of the United States, to reverse a judgment rendered by the supreme court of the State of Louisiana in the case of John R. Marshall vs. the Grand Gulf Railroad and Banking Company, in which said company was defendant and said assignees were intervenors; which judgment was rendered by the said supreme court of Louisiana, on the 24th day of October, 1845, for the affirmance of a judgment in the ninth judicial district court, in and for the parish of Tensas of said State, against the said assignees and against said company, at the instance of the said John R. Marshall, for certain property attached by him as belonging to said company, but claimed by said assignees as to themselves appertaining; in which suit was involved the construction of an article or articles of the Constitution of the United States:

... therefore, the condition of the foregoing obligation is such, that if the above named Grand Gulf Railroad and Banking Company shall prosecute their writ of error to effect, and shall answer all damages and costs if they fail to make good their plea, then this obligation to be void; otherwise to remain in full force and virtue.

H. H. STRAWBRIDGE, [SEAL.]
Att'y for President and Directors of the Grand Gulf Railroad and Banking Company.
GEORGE CONNELLY. [SEAL.]

Witness: JNO. CONNELLY.

Supreme court, Alexandria. Filed March 16, 1849.
M. R. ARIAIL, *Clk.*

Writ of error.

(Duplicate.)

UNITED STATES OF AMERICA.

The President of the United States, to the honorable the judges of the supreme court of the State of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment in a certain suit in the said supreme court, before you, or some of you, between John R. Marshall, plaintiff, and the Grand Gulf Railroad and Banking Company, defendant, and Alfred Ingraham and George Read, assignees of said company, intervenors, wherein a right, title, privilege, or exemption was claimed by the said defendant and said intervenors under an article or articles of the Constitution of the United States, from the operation of a certain statute or statutes of the State of Mississippi, relied upon by the plaintiff in said suit, and opposed by said defendant and intervenors on the ground of said statute or statutes being repugnant to the said Constitution; and the final judgment of the said supreme court (being the highest court of said State in which a decision in the suit could be had) was in favor of the validity of said statute, and against the rights, title, privileges, and exemptions specifically set up and claimed by said defendant and intervenors respectively, a manifest error hath happened to the great damage of the aforesaid defendant and intervenors, as by their complaint appears; we, being willing that said error, if any hath been done, should be duly correct, and full and speedy justice done to the parties aforesaid, do command you that if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday in December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said supreme court may further cause to be done therein, to correct said error, what of right and according to the Constitution of the United States, and the practice, forms, and proceedings of the said court, should be done.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, the fifth day of March, in the year of our Lord 1849.

[SEAL.]

GEORGE EUSTIS,
Chief Justice sup. court.

Supreme court, Alexandria. Filed March 16, 1849.
M. R. ARIAIL, *Clk.*

Assignment of errors.

INGRAHAM et al., plaintiffs in error,
vs.
JOHN R. MARSHALL.

Error to supreme court of the State of Louisiana.

Now came Alfred Ingraham and George Read, assignees of the Grand Gulf Railroad and Banking Company; and also comes said company by its president and directors, and file this their assignment of errors.

And for cause of error they assign and show that the act of the legislature of the State of Mississippi, bearing date 21st February, 1840, pleaded against and in bar of their claim to the property in contest by the aforesaid John R. Marshall, and especially the 7th section thereof, which provides "that it shall not be lawful for any bank in this State to transfer, by endorsement or otherwise, any note, bill receivable, or other evidence of debt," &c., is contrary to section 10th, article 1st, of the Constitution of the United States, forbidding any State of the Union to pass any law impairing the obligation of contracts; and that said act impaired and impairs the right and privilege vested in the aforesaid Grand Gulf Railroad and Banking Company by section 2d of an act passed on the 23d day of December, 1833, by the legislature of the State of Mississippi, and entitled "an act to incorporate the Grand Gulf Railroad and Banking Company;" which section of said act provides that "said company shall be capable in law of purchasing and possessing lands, tenements, and hereditaments, and personal estate of any kind whatever, &c., and the same may sell and dispose of at pleasure." And they further assign and show for cause of error that said act of 21st February, 1840, deprives said company of the vested right and power implied in and belonging to every lawful body corporate of acquiring and alienating all kind of property at will, where not therefrom restricted by the terms of its charter, or of some law previously thereto enacted by competent lawful authority; and that the right and title of said Ingraham and Read to the property in contest is thereby impaired, as well as the obligations of the contracts between said company and the debtors of the debts and claims which form the subject-matter of litigation.

H. H. STRAWBRIDGE,
Att'y for plaintiffs in error.

Supreme court, Alexandria. Filed March 16, 1849.
M. R. ARIAIL, *Clk.*

1849.

Citation in error.

The United States of America, to Mr. John R. Marshall, at New Orleans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court for the State and western district of Louisiana, wherein Alfred Ingraham and George Read, assignees of the Grand Gulf Railroad and Banking Company, and also the president and directors of said company are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this fifth day of March, in the year of our Lord one thousand eight hundred and forty-nine.

[SEAL.]

GEORGE EUSTIS, *Chief Justice.*

Marshal's return.

Received, New Orleans, March 23d, 1849, and on the same day duly served a copy of the within citation in error on Mr. John R. Marshall, at his store in the city of New Orleans, by handing the same to him in person.

Ret'd U. S. marshal's office, New Orleans, March 23d, 1849.

JAS. PRADOS, JR.,
D'y U. S. Marshal.

Clerk's office, supreme court of the State of Louisiana, western district, Alexandria.

I certify the foregoing 83 pages to be a true copy of the record and all the proceedings in the cause entitled "J. R. Marshall vs. the Grand Gulf Railroad and Banking Co.," (Alfred Ingraham and George Read, intervenors,) appealed from the district court for the parish of Tensas, and being No. 1207 of the docket of the late supreme court, including therein the judgment of this supreme court, in a suit bearing the same title, (No. 1206 of said docket,) appealed from the district court for the parish of Madison; to which judgment reference is made in the judgment rendered in this cause.

Given under my hand and the seal of said supreme court, at Alexandria, the 23d day of June, A. D. 1849.

[SEAL.]

M. R. ARIAIL, *Clerk.*

Duplicate.

UNITED STATES OF AMERICA.

The President of the United States, to the honorable the judges of the supreme court of the State of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the

judgment, in a certain suit in the said supreme court, before you, or some of you, between John R. Marshall, plaintiff, and the Grand Gulf Railroad and Banking Company, defendant, and Alfred Ingraham and George Read, assignees of said company, intervenors, wherein a right, title, privilege, or exemption was claimed by the said defendant and said intervenors under an article or articles of the Constitution of the United States, from the operation of a certain statute or statutes of the State of Mississippi, relied upon by the plaintiff in said suit, and opposed by said defendant and intervenors on the ground of said statute or statutes being repugnant to the said Constitution; and the final judgment of the said supreme court, (being the highest court of said State in which a decision in the suit could be had,) was in favor of the validity of said statute, and against the rights, title, privileges, and exemptions specially set up and claimed by said defendant and intervenors, respectively, a manifest error hath happened to the great damage of the aforesaid defendant and intervenors, as by their complaint appears; we being willing that said error, if any hath been done, should be duly corrected, and full and speedy justice done to the parties aforesaid, do command you, that if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may further cause to be done therein, to correct said error, what of right and according to the Constitution of the United States, and the practice, forms, and proceedings of the said court, should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the fifth day of March, in the year of our Lord 1849.

[SEAL.]

GEORGE EUSTIS,
Chief Justice Supreme Court.

Supreme court, Alexandria, filed March 16, 1849.

M. R. ARIAIL, *D'y Clerk.*

Writ of error in duplicate.

Copy of the writ of error lodged in the clerk's office of the supreme court of the State of Louisiana, at Alexandria, in pursuance of the statute in such cases made and provided, this 16th day of March, 1849, by

H. H. STRAWBRIDGE,
Att'y for plaintiff in error.

The United States of America, to Mr. John R. Marshall, at New Orleans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's

1850.

...me court for the State and western district of Louisiana, ... Alfred Ingraham and George Read, assignees of the Grand Gulf Railroad and Banking Company, and also the President and Directors of said company, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this fifth day of March, in the year of our Lord one thousand eight hundred and forty-nine.

[SEAL.]

GEORGE EUSTIS,
Chief Justice.

Marshal's return.

Received, New Orleans, March 23d, 1849, and on the same day served a copy of the within citation in error on Mr. John R. Marshall, at his store in the city of New Orleans, by handing the same to him in person.

Ret'd, U. S. marshal's office, New Orleans, March 23d, 1849.

JOS. PRADOS, JR.,
D'y U. S. marshal.

INGRAHAM and al., plaintiffs in error,
vs.
JOHN R. MARSHALL.

Error to the supreme court of the State of Louisiana.

Now come Alfred Ingraham and George Read, assignees of the Grand Gulf Railroad and Banking Company; and also comes said company by its president and directors, and file this their assignment of errors.

And for cause of error they assign and show, that the act of the legislature of the State of Mississippi, bearing date 21st February, 1840, pleaded against and in bar of their claim to the property in contest by the aforesaid John R. Marshall, and especially the 7th section thereof, which provides "that it shall not be lawful for any bank in this State to transfer, by endorsement or otherwise, any note, bill receivable, or other evidence of debt, &c." is contrary to section 10th article 1st of the Constitution of the United States, forbidding any State of the Union to pass any law impairing the obligation of contracts; and that said act impaired and impairs the right and privilege vested in the aforesaid Grand Gulf Railroad and Banking Company, by section 2d of an act passed on the 23d day of December, 1833, by the legislature of the State of Mississippi, and entitled "An act to incorporate the Grand Gulf Railroad and Banking Company," which section of said act provides that said "company shall be capable in law of purchasing and possessing lands, tenements, hereditaments, and personal estate of any kind whatever, &c., and the same may sell and dispose of at pleasure." And they further assign and show for cause of error, that said act of